G.R.[illegible]7.]

Legis. File No. 21 of 1910-11

Serial Nos. 1-7

1900-11

GENERAL AND REVENUE SECRETARIAT.

(Legislation) 110

Part A: Manuscript
for June 1911

Serial Nos. 1-7

The Mysore Insolvency Regulation

N.B. For Table of Contents please see the inside of the flap.

GPB—5,000—20-3-06.

G.R.S. 11]

190

GENERAL AND REVENUE SECRETARIAT.

(Legislation)

NOTES.

21/1/1910

File No. ~~1~~ 88

FILE HEADING.

The Mysore Insolvency Bill

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

1 Subd with a draft D.O. to the Resident. A copy of Regn I of 1907 is ~~also~~ put up with the ~~proposed~~ Bill SN proposed to be introduced by Mr Nagappa

21/1/1910

Mr. Nagappa, Member of the Legislative Council, requests permission to

NOTES—First sheet.

GPB.—30,000—20-3-06.

to introduce the bill in the Legislative Council. The bill, as forwarded by Mr Nagappa, is adapted from the Provincial Insolvency Act (III of 1907)

3. The law on the subject of insolvency is at present contained in Sections 344 to 360 of our Civil Procedure Code. It has been found from experience that the law as contained there is very defective and very ~~primitive~~ elementary in character. The law of insolvency is, strictly speaking, a branch of the substantive law of the country and the fact that that law is embodied in a Code of Procedure, in itself testifies to its limited scope. ~~It~~ These insolvency provisions have not been ~~to a~~ availed of to any large extent and ~~this~~ is due to the defective character of the provisions. The chief defects of the present insolvency law may be summarised thus 1. It seems to be drafted mainly to help debtors, whether honest or otherwise. In the first place, the scope of the provisions is

very limited. Only decree holders can apply to have their debtors declared insolvents. By the time a creditor can get a decree from a Civil Court, the debtor has plenty of opportunities to dispose of all his available property to the prejudice of his creditors. This evil is intensified by the fact that the present law contains no provisions for annulling fraudulent transactions to the prejudice of creditors. It is therefore clear that the rights of the creditors are not fully protected by the present law. Moreover the present law is unfair in some respects to the debtor himself. It offers no inducements to the debtor himself to come forward voluntarily to Court for a declaration of insolvency, at an early stage. As a matter of fact, debtors now come for relief only after they have disposed of all their property by means of alienations, to the prejudice of creditors, and for the purpose

Serial No.

of getting themselves rid of all their previous obligations and getting a discharge from the insolvency Court. The present law may therefore be said to offer a premium, as it were, for dishonesty and to hold out no inducements to the honest debtor. The result is that the insolvency courts are popular with debtors & shunned by the creditors.

4. To remedy these defects in the present law, the Govt of India have passed the Provincial Insolvency Act; and, perhaps, it may be introduced into Mysore with suitable alterations. The bill is based mainly on the English Bankruptcy Act, modified & simplified to a very great extent. One question to be considered in this connection is with regard to the necessity for such a law in Mysore. In ~~Bangalore~~ the province there are a number of insolvency cases — the number last year being 159 — and the bill is not very complicated. It, in fact

Note—Contn sheet.

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embodies the main substance of the present law while providing for the defects pointed out above and containing provns exhaustive in themselves

3. The changes and advantages made or secured by the proposed legislation may be summarised as below.

(1) The scope of the measure is more extensive

(2) The bill is self contained, with exhaustive provns in all matters

(3) It places the creditors in a better position

(4) and, in some respects, it places the debtors also in a better position

(1) As regards this point, under the present law, only a creditor who has obtained a decree can put in a petition for declaring the debtor an insolvent (vide Sc. 344 of Civil Pro. Code) The idea in the bill is that any creditor can put in a petn, as soon as the debtor commits an act of insolvency (cl. 5 of the bill). What Constitutes an act of insolvency is defined

Note—Contn sheet.

GPB—50 000—17-3-07

G. R. S. 12]
General and Revenue Secretariat.

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in cl. 4. The creditor ~~may~~ need not therefore wait to get a decree before presenting a petn.

(2). As regards this point, reference may be made to the provisions regarding the presentation of the petn & the proceedings connected therewith (cl 6 & clause 7 to 10), the provision for appointment of Official receiver (cl 19), the clearer definition of the rights & duties of receivers (cl. 18 & 20) the consideration of schemes of Composition or compromise which is a new provision (cl 27) & the provisions that regarding what claims may be proved etc. By these provisions, the law is not merely simplified: but made more definite and effective.

(3) I now pass on to the third point which is the most important part of the proposed legislation. The bill places the creditors in a better position. Reference has already been made to the fact that, under the bill, any creditor can present a petn of insolvency if the debtor

GPB—50-000—17-3-07

G. R. S. 12]
General and Revenue Secretariat.

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Commits an act of insolvency. Then there are the provns (clause 13 of the bill) for safeguarding the interests of Creditors, during the pendency of insolvency proceedings, analogous to the provns contained in Sect. 477 to 491 of the Code of Civil Procedure, regarding arrest and attachment of the property before Judgment. By far the most important provision in favour of the creditor is contained in Clauses 36 & 37 of the Bill. Under Cl. 36, any transfer of property by the insolvent, made within two years of declaration of insolvency, without valuable Consideration, may be annulled by the Court. Under Cl 37, the Court has power to annul any preference thereon by the debtor to any creditor within three months of declaration of insolvency.

(4). As regards the position of the debtors, the present law is "uncertain and unfair". The release of the debtor is dependent on the report of the Receiver that the debtor has conveyed all his property to him

G.P.B.—50 000—17-3-07

(section 355 Civil P. C.). + the order of discharge has ~~a~~ reference only to the scheduled debts. Moreover, there is no provision by which the stigma of insolvency can be removed, however much the insolvent has acted honestly and ~~remitted~~ paid all his debts. Under the bill, the insolvent is to be released from jail on being adjudicated an insolvent (vide Cl 16 a) + a discharge operates to absolve him from all the scheduled debts (cl. 45) Cl 44 provides for the grant of a modified discharge subject to conditions. Under Cl 42, when the Court thinks that the debtor ought not to have been declared insolvent or if the ~~debtor~~ debts have been paid in full or a scheme for composition has been approved, the Court has powers to annul the adjudication of insolvency and remove the stigma. Another wholesome provision is contained in Cl 40 by which the Court can appoint the insolvent himself to superintend the manage-

Serial No.

ment of the property granting him an allowance, if necessary, the object being to interest him in the property so as to ~~obtain the interest~~ make it realise most for distribution to the creditors.

6. There is one point in ~~re~~ the bill which requires consideration. It is with respect to the position of secured creditors. Under Sc. 345-356 (C.P.C) secured creditors have priority, in the distribution of assets, over unsecured creditors This has not been retained in the Prov.l Insolvency Act as being inexpedient (Vide Bill introduced by Govt. of India Note on Cl 24). They have been placed in the same position as unsecured creditors; but the former ~~could~~ can realise their security & prove their debts for the balance due if any. The provision in Cl 31 regarding assessment & redemption of the security is far from clear. This point, may ~~be~~ if approved, be referred to the Chief Court for opinion

NOTE—Contn. sheet.

GPB—50.000—18-5-08

Serial No.

7. The proposed legislation is thus an equitable one and permission may be accorded to the member, as requested for its introduction.
(under Secy)

SPA
11.10.08

8. The opinion of the Chief Court and the Govt advocate may be obtained & if they approve of the bill ~~that~~ the intimation may be sent to the Resr ~~& to that effect~~ that the bill is intended to be taken up. It is also a matter for consideration whether an important piece of legislation such as the Insolvency should be allowed to be introduced by a non-official member of the Legve Council & should be ~~pushed~~ ~~Charge of~~ taken charge of by a member of Govt.
Secy)

CBB
20/10/08

We can consider this point later. HK

9. ~~The~~, The Chief Court ~~the~~ may be consulted first.

HK
20/10

Send Bill to Ch. Ct. u-o.

CBB
28/10

NOTE—Contn. sheet.

GPB—50,000—18-5-08

G. R. S. 12]
General and Revenue Secretariat.

21 Sept 10-11

(11

deg File No. 12 of 1908-09.

Serial No.

U.O.J.31

10. Forwarded unofficially to the Registrar Chief Court of Mysore for favour of obtaining the opinion of the Chief Court on the measure.

By order
H R Nagaraja Rao
for Secretary to Govt. Judl. Dept.
SW 28/10.

No. 2881/147

11. The Chief Court is in favour of the Bill which is already in force in the Cd Mn States. Section 31 of the Bill does not, in the opinion of the Judges, appear to present any difficulty.

5.11.8. Rgr. Chief Court.

12. Submitted for orders with the unofficial opinion of the Chief Court. The Govt. Advocate may now be consulted unofficially.

6.11.08 SW 7/11/08.

U.O.J.35

13. Forwarded unofficially to the Government Advocate in Mysore for favor of opinion on the measure.

By order.
H R Nagaraja Rao
SW 9.11.08 For Secretary

NOTE—Contn. sheet.

GPB—50.000—16-5-08

Serial No. 1

14. The Provincial Insolvency Act III of 1907 is no doubt an improvement on the simple provisions of --- Chapter XX of the Civil Procedure Code.

15. The necessity for introducing this Act containing, as it does, elaborate and complex procedure is -- somewhat doubtful. In a non-commercial place like - Mysore, heavy insolvency cases requiring prompt --- action, are few and far between. It is said there were, during the past year, 116 insolvency petitions for disposal in all the Courts of the Province. But no precise information is available as to the number of cases in which the insolvents were able to place at the disposal of the Courts property of more than Rs.500/- in value. If these hazards a guess, it is - that not more than 25 or 30 per cent of the cases are of this description, and the rest will have to be dealt with summarily under section 43, if the Act were to become law.

16. However there will be no harm towards the introduction of the enactment. Most of its provisions - will be rarely, if at all, used, as are the provisions of chapter X of the Code of Civil Procedure about -- discovery, admission, inspection &c of documents.

S. Narayana Rao
Govt Advocate.
16.11.08.

17. Submitted for orders. If the Bill has to be introduced at the next meeting of the Council, intimation

NOTE—Contn. sheet.

GPB—50,000—18-5-08

Serial No.

of the same will have to be given to the Residency early; and if the Bill ought to be introduced by Mr Norgate pro. the official member to whom it is to be entrusted then to be settled.

NCD 17/11/08 18. If the Bill is approved by the Dewan & Council, an intimation may be made to the Resr.

As regards the member who is to introduce the Bill in the Legr Council, I learn that in Madras important bills of this kind are never permitted to be brought in by non-official members.

Secy. COJ 17/11/08

19. I think the introduction of this Bill, & the Code of Civil Procedure Bill, may be entrusted to the Govt Advocate who is an official member, and would be in a position to explain the provisions & the necessity for the same as to arise. The Bill when introduced, should be referred to a Committee consisting of the Govt Advocate, Mr Lowis & myself.

Secy. to Govt 16/11/08

8853 20.11.1908

20. The draft proposed may be approved. If the Govt Advocate takes up

COJ 20/11/08

G.P.B.—50,000—18-5-08

G. R. S. 12
General and Revenue Secretariat.

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~~42 of 1908~~

Serial No.

taking up the Civil Pro Code Bill (as I expect he will have to do) Mr Nagappa may be allowed to introduce the proposed Insolvency Bill by way of dispensing with the publication of such a measure -

11001 Legislative 1908

Chief Secretary

21. This also may be given to the Govt Advocate

29/1/1909

22. Please intimate to Mr Narasimha Rao, Govt Advocate - Mr 30/1/09.

14

23 On further consideration I think Mr.Nagappa may be permitted to introduce the Insolvency Bill.

13.2.09.

12/2/1909

Read orders.

Legislative Secretary

Note—Contn. sheet.

GPB—50,000—13-5-08

No. 191/4encls. Bangalore

29th/30th July 1909.

My dear Sir,

Adverting to the late Dewan Mr. V.P. Madhava Rao's D.O. No. 1612 dated 27th February 1909 relating to the introduction of certain Bills into the Legislative Council, I forward herewith a copy each of the Insolvency Bill and the Limitation Bill which it is intended to introduce at the next Meeting of the Council. The Code of Civil Procedure Bill, which is also to be introduced at the same time has not yet been printed in extenso and I have therefore enclosed a copy of the British Indian Code with the necessary changes which are also shown separately in a printed copy. The statements of Objects and Reasons appended explain the nature and scope of the Draft - - Regulations.

2. As regards the Local Boards Regulation Amendment Bill which it was intended to introduce into the Council I write to say that the amendment suggested in your D.O. letter No. 1782 dated 20th March 1909 as well as certain other manedments to the Regulation which have since been found to be necessary are under the consideration of the Durbar, and it is not therefore proposed to intmduce it at the next Meeting.

Yours Sincerely,

T. B. Copeland, Esquire, I.C.S.,
First Assistant Resident in Mysore.

Copy,

K.R.
2

THE RESIDENT MYSORE

BANGALORE.

Dated 24th August 1909.

Dear Mr Ananda Rao,

I am desired to acknowledge, with thanks, the receipt of a copy of the Mysore Insolvency Bill, forwarded with your D.O. letter No. 191 dated the 29th/30th July 1909, and to state in reply, that the Resident sees no prima-facie objection to the Bill being laid before the Mysore Legislative Council.

Separate communications will be made as regards the Mysore Code of Civil Procedure and Limitation Bills.

Yours sincerely,

T. Ananda Rao, Esq., B.A.,
Dewan of Mysore.

K.M.

G. R. S. 12]
General and Revenue Secretariat.

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(17)

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24 Leave was given to introduce the Bill before the Legislative Council at the Meeting held on the 2nd Sept 1909 The Bill was ~~passed~~ introduced & read at the Meeting held on the 13th April 1910 when it was referred to a Select Committee for Consideration & report. The report of the Committee was considered at the Meeting held on the 22nd Nov 1910. when it was adopted by the Council with certain alterations.

25. The sanction of the Govt of India has now to be obtained for the Bill being passed into Law. A Draft with a draft for approval.

JKS(25)
14/12/10
SN (11)
15/12

17

Typed draft with amendments as revised
15/12/10. SN

Typed draft submd
SN. 11
17/12/10

16

Draft may be approved
19/12/10 SN

1079

Please see the 2nd Draft

19/12/10

Draft

NOTE—Contn. sheet.

9401
20.12.10

GPB—50,000—16.5.08

G. R. S. 12]
General and Revenue Secretariat.

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Serial No.

Draft approved by Mr Dewan
Ry 2 Sundays
21/12/10 Secy to Dewan

Secy to Govt Mysore Dept
21/12/10

22/12/10.

1. No Pol. 598 dated 23rd Dec. 1910 to the F. A. Resident in Mysore forwarding copy of the Mysore Insolvency Bill and requesting the sanction of the Govt of India for its being passed into law

2. Do. No 466 dated the 24th January 1911 from Mr P. B. Marbuchin, First Asst Resident to Mr Dewan.

Refers to certain amendments in the Bill for adoption by Mr Comin or before the Bill is finally passed by H. H. the Maharaja.

Note—Contn. sheet.

GPB—50,000—18-5-08

Serial No.

19

Subd. The following amendments are suggested.

1. Cl. 32. Substitution of the words "sum certain" for the words "certain sum" in line 1 of this clause.

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

31. The words "certain sum" seem to have crept in by oversight in our draft for the words "sum certain" to be found in the B. India Act. This has therefore to be rectified.

2. Clause 36. Substitution of the words "before or at and in consideration of marriage" for the words "at or in consideration of marriage". The change was made by the Select Committee on the Bill.

3. Clause 55 — Omission of sub-clause (1) of this clause & the Schedule. This is recommended for the reason that the Insolvency Bill will come into force simultaneously with the Civil Pro Code & Limitation Bills. But this is not the reason perhaps that reference to the latter enactments should be retained, but for other reasons.

XXS (25)

30/1/11 32 (1). Clause 32 (1). This is an oversight in the draft and the transposition of words as suggested by the Reg[r] may be adopted.

(2) ~~The Clause~~

(2) Clause 36. The corresponding Section in the B. Indian act is taken

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Serial No.

from the English Bankruptcy Act (Sec 47) and was provides therefore, primarily, only to cases of English marriage Settlements. The policy underlying the section is not to allow "voluntary" transfers after marriage.

33 The Select Committee that revised our bill desired to extend the protection to marriage gifts among Hindus called Stridhana. As this species of gifts can be made even after marriage (Please See pp 884-5 Mayne's Hindu Law), the words "before and" in the clause were replaced by "at or". The Reg[r] apprehend that this change will protect several kinds of alienations that do not deserve protection.

34 In so far as this remark applies to English marriage Settlements, we may perhaps revert to the old phraseology, as Englishmen are not evidently anxious to have the category of protected alienations enlarged. At the same time the

NOTE — Contn. sheet.

GPB—50,000—12-8-10

Serial No.

Amendment suggested by the Res't while ~~drafting~~ making the objection just rep'd to ~~Para 3 of the letter~~ does not protect the difficult kinds of "Stridhana" E.g. ~~those properties~~ Gifts made after marriage to a Hindu wife. We may therefore maintain the spirit of the alteration made by the Select Committee while meeting ~~the~~ the objection raised by the Res't. This may be done by altering the words as follows:—

"Any transfer of property not being a transfer made before and in consideration of marriage ~~made~~ ~~existing~~ or as constituting Stridhana under Hindu law."

27

35. Another alternative would be to ~~omit~~ accept the suggestion of the Res't in toto.

36 (3) Cl. 55 In order that the draft bill might be ~~made~~ self contained

NOTE—Contn. sheet.

BPG—55,000—27-4-09

Serial No.

it was thought necessary to provide in it for all the necessary repeals. It is only an accident that the repeals referred to in the schedule happen also to be repealed independently. There is no harm in repetition in such matters.

37 In fact the bill would not have been complete without the repeals. No redundancy arises only by the fact that all the new Regulations will come into force simultaneously.

30/1/11.

Down this 2nd Q

1431

38 The first correction will of course be accepted.

2

39 2nd Point. I do not think that our object was to protect the whole of Stridhana property. I am disposed to think that the suggestion of the Residency may be accepted there also. We

NOTE—Contn. sheet.

BPG—55,000—27-4-09

Serial No.

may however say that the Select Committee felt the difficulty of the Matter & suggested the amendment adopted as the best alternative on the whole; ~~But~~ but that the alteration suggested will be placed before the Leg Council on the final occasion and adopted or dropped accg to their opinion

40 On the 3rd point, ~~we~~ we may give a reply as suggested by the Asst Secy.

41. (Please see whether the Br. Ind. C.P.C. & were to come to force the same day. They also have a similar repeal of & a Schedule)

In Please draft a reply on these lines & submit to Dewan.

3/ 1/2/11

Note—Contn. sheet.

GPB—50,000—12-8-10

Serial No. 43

Upon perusal of draft for approval.

The C. Indian Civil Procedure Code and Limitation Act came into force simultaneously on the 1st day of January 1909, though sec. 31 of the latter which refers to certain mortgage suits came into force earlier. The Schedule of repeals appended to both contains reference to the Civil Procedure Code Amendment Acts of 1888 and 1892 though in each reference required so far as the particular Act amended was ~~had~~ made. We have done also the same thing here. This may perhaps be added in the draft Rules.] no Put up orders.

no. There is no overlapping in the Schedule of repeal in the C. Indian acts as some of them came into force before the C. P. C.

25

2/2/11
SW (.U.)
4/2/11

Type the draft.

4/2/11.

Typed draft with.

7/2/11
SW (U)
8/2

44 Draft may be approved

8/2/11.

12484.
10065

Shown to 2nd C.

45 Draft approved by 2nd Councillor 15.2.11

8.2.11

NOTE—Contn. sheet.

Serial No.

46 Dewan

10198
18.2.11

47 Draft approved by the Dewan
22.2.11

48 Idem

25/2/11

3 No Pol 788 dated 25/2/11 from the Hon'ble the Resident in Mysore

States that the suggestion re clause 32(1) of the Bill has been noted for necessary action and re clause 76 the council is in favor of the [illegible] that the suggestion will be placed before the Legis Council by

Serial No.

4

No 2119 dated 6/4/11
From the F. A. Resident in Mysore
Informs that the Governor General of India in Council has accorded his consent to the draft Insolvency Bill with the usual reservation of power and authority that vests in him by virtue of Sec 14 of the Instrument of transfer.

Subd. 4/4. This has been entered in the agenda for the next meeting of the Legislative Council. with the amendments we have agreed to propose in clause 32 & 36.

~~3(3)(5)~~ 8/4/11 SN(11) 8/4/11

50. Subd to 2nd Cr for info.

1878

8/4/11 8/4/11

21

~~Legislative~~ 11/4 15/4/11

51 A Copy of the Bill as finally passed by the Legislative Council at the meeting held on the 27th instant is submitted for the sanction of H.H. the Maharaja being obtained for its promulgation as Law.

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

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Serial No.

As required by Rule 57 of the Leg Council Rules.

1KS (25) SW(11) 29/4/11 29/4

1/5/11 SH

Sec

To Dewan through 2nd Cr

5. 2/5/11

2/5/11 SH 4/5/11

CTB 2/5/11 SH 4/5/11

16501 8.5.11

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Submitted to His Highness.

53 The Insolvency Bill which has been before the Legislative Council since September 1909 has received the sanction of the Government of India (vide Residency letter No.2119 dated 6th April 1911) and was finally passed by the Legislative Council at its meeting held on the 27th ultimo. I now solicit His Highness' early sanction to the bill being promulgated as law. It is to come into force with other bills on the 1st July 1911.

Record of Cases submitted for the **Orders** of His Highness the **Maharaja**

Subject.

10.5.11
1987

Promulgation of the Insolvency Bill as law.

11684

Order.

Sanctioned
~~KRW~~
15/5/11

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 21 of 1910-11

31

Serial No.

5 No J 3213 dated 22nd May 1911 to the compiler, Mysore Gazette
Orders the publication of the Bill as Regn II of 1911

5b Submitted

8 spare copies have been received and compared.

Copies have to be sent to the Residency as usual. A draft letter is herewith put up.

CR (58) SR(11) 6/6/11
6/5/11

6/6/11

A Rec 21/5/11

6 To the A Resident in Mysore
No PR 1095 of the 9th June 194.
Forwards 10 Copies of the Regulation

31

7 Notification No 3435 of 14th June 194.
To the compiler, Mysore Gazette
Publishes an erratum in the Regulation.

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

~~The Mysore Insolvency Regn 1911~~
~~Submitted~~

58 In the Mysore Insolvency Regn 1911 published in the Mysore Gazette Part-III ~~Page 73~~ in at page 73 in line 8 para (3) of Section 39, the word "death" occurs instead of the word "debt". A draft errata notification is herewith put up

(58) SN(11)
6/6/11

59 2 Sly

sd 7

No J 3435 dated 8/6/11
In the Compiler, Mysore Gazette
Notifies a correction to be made in line 8 para 3 of the Regulation as published in the Mysore Gazette 8/25/5/11 Part-III

13/6/11

Please attend the C.P.C. also

Carefully typed on the Gross.

N B—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

GPB—30,000—28-2-11

NOTIFICATION.

No. 89--L. C., dated Bangalore, 22nd September 1909.

Under rule 31 of the rules relating to the conduct of business of the Mysore Legislative Council, the following Bill together with a statement of objects and reasons is published for general information.

By Order,

S. HIRIYANNAIYA,

Secretary, Mysore Legislative Council.

THE MYSORE INSOLVENCY BILL.

CONTENTS.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Insolvency jurisdiction.
4. Acts of insolvency.
5. Petition and adjudication.
6. Presentation and admission of petition.
7. Withdrawal of petitions.
8. Consolidation of petitions.
9. Power to change carriage of proceedings.
10. Continuance of proceedings on death of debtor.
11. Contents of petition.
12. Procedure on admission of petition.
13. Interim proceedings against debtor.
14. Procedure at hearing.
15. Dismissal of petition.
16. Order of adjudication.
17. Power to cancel one of concurrent orders of adjudication
18. Appointment of receiver.
19. Power to appoint Official Receivers.
20. Duties and powers of receiver.
21. Special provisions in regard to immovable property.
22. Appeal to Court against receiver.
23. Powers of Court if no receiver appointed.
24. Schedule of creditors.
25. Mode of proof.
26. Disallowance and reduction of entries in schedule.
27. Compositions and schemes of arrangement.
28. Debts provable under this Regulation.
29. Debt payable at a future time.
30. Mutual dealings and set-off.
31. Secured creditors.
32. Interest.
33. Priority of debts.
34. Restriction of rights of creditor under execution.
35. Duties of Court executing decree as to property taken in execution.
36. Avoidance of voluntary transfer.
37. Avoidance of preference in certain cases.
38. Protection of *bonâ fide* transactions.
39. Dividends.
40. Management by and allowance to insolvent.
41. Right of insolvent to surplus.
42. Power to annul adjudication of insolvency.
43. Duties of debtors.
44. Discharge.
45. Effect of order of discharge.

46. Appeals.
47. General powers of Courts.
48. Summary administration.
49. Costs.
50. Courts to be auxiliary to each other.
51. Power to make rules.
52. Delegation of powers to Official Receivers.
53. Undischarged insolvent obtaining credit.
54. Power of Government to bar application of certain provisions to certain Courts.
55. Repeals.

THE SCHEDULE.

Enactments repealed.

Original

1910-11.

FILE No. 21 of 1910-11.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT.

JUDICIAL AND LEGISLATIVE (LEGISLATION).

JUNE 1911.

"A" Collection: Serial Nos. 1—7.

The Mysore Insolvency Bill.

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Serial No. of File	Number and date of letter and contents	Reference	Page in A. Progs.
1	To the First Assistant to the Hon'ble the Resident in Mysore, No. Pol. 598, dated the 23rd December 1910. Forwards a copy of the Mysore Insolvency Bill and requests that the sanction of the Government of India may be obtained for its being passed into law.		
2	D. O. letter No. 404, dated the 27th January 1911, from Mr. P. B. Warburton, First Assistant to the Hon'ble the Resident, to the Dewan. Suggests certain amendments to the Bill.		
3	D. O. letter No. Pol. 786, dated the 25th February 1911, to the First Assistant to the Hon'ble the Resident in Mysore. States that the suggestion regarding clause 32 (1) has been noted for necessary action and that the suggestion with regard to clause 36 will be placed before the Legislative Council for consideration.		
4	From the same, No. 2119, dated the 6th April 1911. States that the Governor, General of India in Council has accorded its assent to the Bill with the usual reservation of power and authority that vests in it by Art. 19 of the Instrument of Transfer.		
5	Order No. J. 3213, dated the 22nd May 1911, to the Compiler, *Mysore Gazette*. Orders the publication of the Bill as Regulation No. VI of 1911.		
6	To the First Assistant to the Hon'ble the Resident in Mysore, No. Pol. 1079, dated the 9th June 1911. Forwards 10 copies of the Regulation.		
7	Notification No. J. 3435, dated the 14th June 1911, to the Compiler, *Mysore Gazette*. Publishes an erratum in the Regulation.		

1910-11.

GENERAL AND REVENUE SECRETARIAT.

(LEGISLATION).

NOTES.

FILE No. 21 OF 1910-11.

The Mysore Insolvency Bill.

1. Submitted with a draft D. O. to the Resident. A copy of Regulation I of 1907 is put up with the bill proposed to be introduced by Mr. Nagappa.

S. N.

18-9-08.

2. Mr. Nagappa, Member of the Legislative Council, requests permission to introduce the Bill in the Legislative Council. The Bill, as forwarded by Mr. Nagappa, is adapted from the Provincial Insolvency Act (III of 1907).

3. The law on the subject of insolvency is at present contained in Sections 344 to 360 of the Civil Procedure Code. It has been found from experience that the law as contained there is very defective and very elementary in character. The law of insolvency is, strictly speaking, a branch of the substantive law of the country and the fact that that law is embodied in a Code of Procedure, in itself testifies to its limited scope. These insolvency provisions have not been availed of to any large extent and this is due to the defective character of the provisions. The chief defects of the present insolvency law may be summarised thus. It seems to be drafted mainly to help debtors, whether honest or otherwise. In the first place, the scope of the provisions is very limited. Only decree holders can apply to have their debtors declared insolvents. By the time a creditor can get a decree from a Civil Court, the debtor has plenty of opportunities to dispose of all his available property to the prejudice of his creditors. This evil is intensified by the fact that the present law contains no provisions for annulling fraudulent transactions to the prejudice of creditors. It is therefore clear that the rights of the creditors are not fully protected by the present law. Moreover, the present law is unfair in some respects to the debtor himself. It offers no inducements to the debtor himself to come forward voluntarily to court for a declaration of insolvency, at an early stage. As a matter of fact, debtors now come for relief only after they have disposed of all their property by means of alienations, to the prejudice of creditors, and for the purpose of getting themselves rid of all their previous obligations and getting a discharge from the insolvency court. The present law may therefore be said to offer a premium, as it were, to dishonesty and to hold out no inducements to the honest debtor. The result is that the insolvency courts are popular only with debtors and shunned by the creditors.

4. To remedy these defects in the present law, the Government of India have passed the Provincial Insolvency Act; and, perhaps, it may be introduced into Mysore with suitable alterations. The Bill is based mainly on the English Bankruptcy Act, modified and simplified to a very great extent. One question to be considered in this connection is with regard to the necessity for such an elaborate law in Mysore. In the province there are a number of insolvency cases, the number last year being 159—and the Bill is not very complicated. It, in fact, embodies the main substance of the present law, while providing for the defects pointed out above and containing provisions exhaustive in themselves.

5. The changes and advantages made or secured by the proposed legislation may be summarised as below:—

(1) The scope of the measure is more extensive,
(2) the Bill is self contained, with exhaustive provisions in all matters,
(3) it places the creditors in a better position,
and, (4) in some respects, it places the debtors also in a better position.

(1) As regards this point, under the present law, only a creditor who has obtained a decree can put in a petition for declaring the debtor an insolvent (*vide* Section 344 of Civil Procedure Code). The idea in the Bill is that any creditor can put in a petition, as soon as the debtor commits an act of insolvency (Clause 5 of the Bill). What constitutes an act of insolvency is defined in Clause 4. The creditor need not therefore wait to get a decree before presenting a petition.

(2) As regards this point, reference may be made to the provisions regarding the presentation of the petition and the proceedings connected therewith (Clause 6 and Clauses 7 to 10), the provision for appointment of official receiver (Clause 19), the clearer definition of the rights and duties of receivers (Clause 18 and 20), the consideration of schemes of composition or compromise, which is a new provision (Clause 27), and the provisions regarding what claims may be proved, etc. By these provisions, the law is not merely simplified but made more definite and effective.

(3) I now pass on to the third point which is the most important part of the proposed legislation. The Bill places the creditors in a better position. Reference has already been made to the fact that, under the Bill, any creditor can present a petition of insolvency if the debtor commits an act of insolvency. Then there are the provisions (clause 13 of the Bill) for safeguarding the interests of creditors, during the pendency of insolvency proceedings, analogous to the provisions contained in Sections 477 to 491 of the Code of Civil procedure, regarding arrest and attachment of the property before judgment. By far the most important provision in favour of the creditor is contained clauses 36 and 37 of the Bill. Under Clause 36, any transfer of property by the insolvent, made within two years of declaration of insolvency, without valuable consideration, may be annulled by the court. Under Clause 37, the court has power to annul any preference shown by the debtor to any creditor within three months of declaration of insolvency.

(4) As regards the position of the debtors, the present law is "uncertain and unfair." The release of the debtor is dependent on the report of the receiver that the debtor has conveyed all his property to him (Section 355, Civil P. C.) and the order of discharge has reference only to the scheduled debts. Moreover, there is no provision by which the stigma of insolvency can be removed, however much the insolvent has acted honestly and paid all his debts. Under the Bill, the insolvent is to be relased from jail on being adjudicated an insolvent (*vide* Clause 16 B) and a discharge operates to absolve him from all the scheduled debts (Clause 45); Clause 44 provides for the grant of a modified discharge subject to conditions. Under Clause 42, when the court thinks that the debtor ought not to have been declared insolvent or if the debts have been paid in full or a scheme for composition has been approved, the court has power to annul the adjudication of insolvency and remove the stigma. Another wholesome provision is contained in Clause 40 by which the court can appoint the insolvent himself to superintend the management of the property granting him an allowance, if necessary, the object being to interest him in the property so as to make it realise most for distribution to the creditors.

6. There is one point in the Bill which requires consideration. It is with respect to the position of secured creditors. Under Section 356 (C. P. C.) secured creditors have priority, in the distribution of assets, over unsecured creditors. This has not been retained in the Provincial Insolvency Act as being inexpedient (*vide* Bill introduced by Government of India. Note on Clause 24). They have been placed in the same position as unsecured creditors; but the former can realise their security and prove their debts for the balance due, if any. The provision in Clause 31 regarding assessment and redemption of the security is far from clear. This point may, if approved, be referred to the Chief Court for opinion.

7. The proposed legislation is thus an equitable one and permission may be accorded to the member, as requested for its introduction.

S. P. RAJAGOPALACHAR.
11-10-08

8. The opinion of the Chief Court and the Government Advocate may be obtained and, if they approve of the Bill, intimation may be sent to the Residency that the Bill is intended to be taken up. It is also a matter for consideration whether an important piece of legislation such as the Insolvency should be allowed to be introduced by a non-official member of the Legislative Council or should be taken charge of by a member of Government.

C. S. BALASUNDARAM IYER.
20-10-08

9. The Chief Court may be consulted first.

K. S. CHANDRASEKHARA AIYAR.
28-10-08

10. Forwarded unofficially to the Registrar, Chief Court of Mysore, for favor of obtaining the opinion of the Chief Court on the measure.

By order,
S. P. RAJAGOPALACHAR,
For Secy. to Govt., Gen. & Rev. Depts.

11. The Chief Court is in favor of the Bill which is already in force in the Civil and Military Station. Section 31 of the Bill does not, in the opinion of the Judges, appear to present any difficulty.

V. A. RAJARATNA MUDALIAR,
Registrar, Chief Court.
5-11-08

12. Submitted for orders with the unofficial opinion of the Chief Court. The Government Advocate may now be consulted unofficially.

M. S. S.
6-11-08

S. N.
7-11-08

13. Forwarded unofficially to the Government Advocate in Mysore for favor of opinion on the measure.

By Order,
S. P. RAJAGOPALACHAR,
For Secy. to Govt., Gen. & Rev. Depts.

14. The Provincial Insolvency Act, III of 1907, is no doubt an improvement on the simple provisions of Chapter XX of the Civil Procedure Code.

15. The necessity for introducing this Act containing, as it does, elaborate and complex procedure is somewhat doubtful. In a non-commercial place like Mysore, heavy insolvency cases requiring prompt action, are few and far between. It is said there were, during the past year, 156 insolvency petitions for disposal in all the Courts of the Province. But no precise information is available as to the number of cases in which the insolvents were able to place at the disposal of the Courts property of more than Rs. 500 in value. If I may hazard a guess, it is that not more than 25 or 30 per cent of the cases are of this description, and the rest will have to be dealt with summarily under Section 48, if the Act were to become law.

16. However, there will be no harm done by the introduction of the enactment. Most of its provisions will be rarely, if at all, used, as are the provision of Chapter X of the Code of Civil Procedure about discovery, admission, inspection, etc. of documents.

S. NARAYANA RAO,
Government Advocate.
16-11-08

17. Submitted for orders. If the Bill has to be introduced at the next meeting of the Council, intimation of the same will have to be given to the Residency, early; and if the Bill is not to be introduced by Mr. Nagappa, the official member to whom it is to be entrusted has to be settled.

T. K. S.
17-11-08.

18. If the Bill is approved by the Dewan and Council, an informal reference may be made to the Residency.

As regards the member who is to introduce the Bill in the Legislative Council, I learn that in Madras important Bills of this kind are never permitted to be brought in, by non-official members.

C. S. BALASUNDARAM IYER.
17-11-08.

19. I think the introduction of this Bill, and of the Code of Civil Procedure Bill may be entrusted to the Government Advocate, who is an official member, and would be in a position to explain questions as to their provisions should the necessity arise. He was in charge of the Bill lately before the Legislative Council, to amend the existing Code of Civil Procedure.

K. S. CHANDRASEKHARA AIYAR.
20-11-08.

20. The Draft proposed may be approved. If the Government Advocate takes up the Civil Procedure Code Bill (as I expect he will have to do) Mr. Nagappa may be allowed to introduce the proposed Insolvency Bill by way of a division of labour and of giving him an opportunity to train himself in work of this kind.

T. ANANDA RAO,
1st Councillor.
23-11-08.

21. This also may be given to the Government Advocate.

V. P. MADHAVA RAO,
Dewan of Mysore.
29-1-09.

22. Please intimate to Mr. Narayana Rao, Government Advocate.

K. S. CHANDRASEKHARA AIYAR.
30-1-09.

23. On further consideration I think Mr. Nagappa may be permitted to introduce the Insolvency Bill.

V. P. MADHAVA RAO.
12-2-09.

D. O. No. 1612, dated the 27th February 1909, from Mr. V. P. Madhava Rao, B.A. *Dewan, to Mr. S. M. Fraser, C.I.E., Resident in Mysore.*

Dear Mr. Fraser,

"I send herewith for information drafts of the marginally noted Bills, together with statements of objects and reasons therefor, and write to say that the Durbar propose to place these measures before the Legislative Council at its next meeting.

1. A Bill to amend the Mysore Local Boards Regulation II of 1902.
2. The Mysore Small Cause Courts Bill.

I would also invite reference to the Civil Procedure Code, the Limitation Act and the law relating to Insolvency as recently revised by the Government of India. The desirability of bringing the law in Mysore on these subjects into line with the new British Indian Acts has been urged upon the Durbar. It is therefore proposed to introduce at the same meeting of the Council Bills to amend and consolidate the law relating to the above subjects also. Copies of the draft Bill will be forwarded to you as soon as they are printed.

Yours sincerey,
V. P. MADHAVA RAO.

D. O. No. 191-4—*Enclosures, dated Bangalore, 29th—30th July* 1909, *from Dewan, Mr. T. Ananda Rao, B.A., to Mr. T. B. Copeland, First Assistant to the Hon'ble the Resident in Mysore.*

Adverting to the late Dewan Mr. V. P. Madhava Rao's D. O. No. 1612, dated 27th February 1909 relating to the introduction of certain Bills into the Legislative Council, I forward herewith a copy each of the Insolvency Bill and the Limitation Bill which it is intended to introduce at the next Meeting of the Council. The Code of Civil Procedure Bill, which is also to be introduced at the same time has not yet been printed *in extenso* and I have therefore enclosed a copy of the British Indian Code with the necessary changes which are also shown separately in a printed copy. The statements of Objects and Reasons appended explain the nature and scope of the Draft Regulations.

2. As regards the Local Boards Regulation Amendment Bill which it was intended to introduce into the Council I write to say that the amendment suggested in your D. O. letter No. 1782, dated 20th March 1909, as well as certain other amendments to the Regulation which have since been found to be necessary are under the consideration of the Durbar, and it is not therefore proposed to introduce it at the next Meeting.

D. O. No. 5593, *dated 24th August* 1909, *from Mr. T. B. Copeland, to the Dewan.*

I am desired to acknowledge, with thanks, the receipt of a copy of the Mysore Insolvency Bill, forwarded with your D. O. letter No. 191, dated the 29th—30th July 1909, and to state in reply, that the Resident sees no *prima facie* objection to the Bill being laid before the Mysore Legislative Council.

Separate communications will be made as regards the Mysore Code of Civil Procedure and Limitation Bills.

24. Leave was given to introduce the Bill before the Legislative Council at the meeting held on the 2nd September 1909. The Bill was introduced and read at the meeting held on the 13th January 1910, when it was referred to a select committee for consideration and report. The report of the Committee was considered at the meeting held on the 22nd November 1910, when it was adopted by the Council with certain alteration.

25. The sanction of the Government of India has now to be obtained for the Bill being passed into law. Submitted with a draft for approval.

T. K. S.
14-12-10.
S. N.
15-12-10.

26. Draft may be approved.

S. HIRIYANNAIYA,
19-12-10.

27.

H. V. NANJUNDAYYA,
19-12-10.

28. Draft approved by the Dewan.

T. GOVINDA RAO,
Private Secy. to Dewan.
21-12-10.

29. Issue.

C. S. BALASUNDARAM IYER.
21-12-10.

1. Letter. No. Pol. 598, *dated* 23*rd December* 1910, *to the First Assistant to the Hon'ble the Resident in Mysore.*

Forwarding a copy of the Mysore Insolvency Bill and requesting the sanction of the Government of India for its being passed into law.

2. D. O. No. 464, *dated* 27*th January* 1911, *from Mr. P. B. Warburton, First Assistant to the Hon'ble the Resident in Mysore, to the Dewan.*

Suggests certain amendments in the Bill for adoption by the Council or before the Bill is finally passed by His Highness the Maharaja.

30. Submitted. The following amendments are suggested :—

(1) *Clause 32.*—Substitution of the words "sum certain" for the words "certain sum" in line of this clause.

31. The words "certain sum" seem to have crept in by oversight in our draft for the words "sum certain" to be found in the British Indian Act. This has therefore to be rectified.

(2) *Clause* 36.—Substitution of the words "before, or at and in consideration of marriage" for the words "at or in consideration of marriage." The change was made by the Select Committee on the Bill.

(3) *Clause* 55.—Omission of sub-clause (1) of this clause and the schedule. This is recommended for the reason that the Insolvency Bill will come into force simultaneously with the Civil Procedure Code and Limitation Bills. But this is just the reason perhaps that reference to the latter enactments should be retained. Submitted for orders.

T. K. S. (25)
30-1-11

S. N. (11)
30-1-11

32 (1) *Clause* 32 (1).—This is an oversight in the draft and the transposition of words as suggested by the Residency may be adopted.

(2) *Clause* 36.—The corresponding section in the British Indian Act is taken from the English Bankruptcy Act (Section 47) and provides therefore, primarily, only to cases of English marriage settlements. The policy underlying the section is not to allow "voluntary" transfers *after marriage.*

33. The Select Committee that revised our Bill desired to extend the protection to marriage gifts among Hindus, called *stridhana.* As this species of gifts can be made even after marriage (please see page 884-5 of Mayne's Hindu Law), the words "before and" in the clause were replaced by "at or." The Residency apprehend that this alteration will protect several kinds of alienations that do not deserve protection.

34. In so far as this remark applies to English marriage settlements, we may perhaps revert to the old phraseology, as Englishmen are not evidently anxious to have the category of protected alienations enlarged. At the same time the amendment suggested by the Residency while meeting the objection just referred to does not protect the different kinds of "*stridhana*" *e.g.*, gifts made after marriage to a Hindu wife. We may therefore maintain the spirit of the alteration made by the Select Committee while meeting the objection raised by the Residency.

This may be done by altering the words as follows :—

"Any transfer of property not being a transfer made *before and in consideration* of marriage or as constituting *Stridhana* under Hindu law.

35. Another alterative would be to accept the suggestion of the Residency *in toto.*

36. (3) *Clause* 55.—In order that the draft Bill might be self-contained it was thought necessary to provide in it for all the necessary repeals. It is only an accident that the enactments referred to in the schedule happen also to be repealed independently. There is no harm in repetition in such matters.

37. In fact the Bill would not have been complete without the repeals. The redundancy arises only by the fact that all the new Regulations will come into force simultaneously.

S. HIRIYANNAIYA.
30-1-11

38. The first correction will of course be accepted.

39. *Second point.*—I do not think that our object was to protect the whole of *stridhana* property. I am disposed to think that the suggestion of the Residency may be accepted there also. We may however say that the Select Committee felt the difficulty of the matter and suggested the amendment adopted as the best alternative on the whole; but that the alteration suggested will be placed before the Legislative Council on the final occasion and adopted or dropped according to their opinion.

40. On the 3rd point, we may give a reply as suggested by the Assistant Secretary.

41. (Please see whether the British Indian Civil Procedure Code, etc., were to come to force the same day. They also have a similar repeal clause and a schedule.)

42. Please draft a reply on these lines and submit to Dewan.

H. V. NANJUNDAYYA.
1-2-11.

43. Draft of a D. O. is submited for approval. The British Indian Civil Procedure Code and Limitation Act came into force simultaneously on the 1st day of January 1909, though Section 31 of the latter which refers to certain mortgage suits came into force earlier. The schedule of repeals appended to both contains reference to the Civil Procedure Code amendment Acts of 1888 and 1892, though in each reference required so far as the particular Act concerned has been made. We have done also the same thing here. This may perhaps be added in the draft reply.

T. K. S.
2-2-11

S. N.
4-2-11

44. There is no overlapping in the extent of repeal in the British Indian Acts as some of them came into force before the Civil Procedure Code. Draft put up may be approved.

S. HIRIYANNAIYA.
8-2-11

45. Draft approved by 2nd Councillor.

M. S. S.
15 2-11

46.

47. Draft approved by the Dewan.

B. V. L.
22-2-11.

48. Issue.

C. S. BALASUNDARAM IYER.
24-2-11.

Issue to-day, Secretary has signed the draft.

S. HIRIYANNAIYA.
25-2-11.

3. *No. Pol. 785, dated 25th February 1911, to the First Assistant to the Hon'ble the Resident in Mysore.*

States that the suggestion *re* clause 32 (1) of the bill has been noted for necessary action and *re* clause 30 the council is in favor of the one now adopted but that the suggestion will be placed before the Legislative Council.

4. *Letter No. 2118, dated 5th April* 1911, *From the First Assistant Resident in Mysore.*

Informs that the Governor General of India in council has accorded his consent to the draft Insolvency Bill with the usual reservation of power and authority that vests in him by virtue of Article 19 of the Instrument of transfer.

49. This has been entered in the agenda for the next meeting of the Legislative Council with the amendments we have agreed to propose in clauses 32 and 36.

T. K. S. (25)
8-4-11.

S. N.
8-4-11.

50. Submitted to Second Councillor for information.

S. HIRIYANNAIYA.
8-4-11.

51. A copy of the Bill as finally passed by the Legislative Council at the meeting held on the 27th instant is submitted for the sanction of His Highness the Maharaja being obtained for its promulgation as law as required by rule 51 of the Legislative Council Rules.

T. K. S. (25)
29-4-11.

S. N. (11)
29-4-11.

S. HIRIYANNAIYA,
1-5-11.

52.

H. V. NANJUNDAYYA.
(*Second Councilor*).
2-5-11.

Submitted to His Highness.

53. The Insolvency Bill which has been before the Legislative Council since September 1909 has received the sanction of the Government of India (*vide* Residency letter No. 2119, dated 6th April 1911) and was finally passed by the Legislative Council at its meeting held on the 27th ultimo. I now solicit His Highness' early sanction to the Bill being promulgated as law. It is to come into force with other Bills on the 1st July 1911.

T. ANANDA ROW,
Dewan of Mysore.
9-5-11.

Order.

54. Sanctioned.

K. R. W.
15-5-11.

55. Issue.

C. S. BALASUNDARAM IYER.
20-5-11.

No J. 3213, dated 22nd May 1911, *to the Compiler, Mysore Gazette.*
Orders the publication of the bill as Regulation VI of 1911.

56. Submitted. Spare copies have been received and compared.
Copies have to be sent to the Residency as usual. A draft letter is herewith put up.

S. V. S. (58)
6-6-11.

S. N. (11)
6-6-11.

57. Issue.

S. HIRIYANNAIYA.
6-6-11.

6. *To the First Assistant Resident in Mysore, No. Pol.* 1079, *dated the 9th June* 1911.
Forwards ten copies of the Regulation.

7. *Notification No. J. 3435, dated the 14th June 1911.*
Publishes an erratum in the above Regulation.

Proceedings of the Government of His Highness the Maharaja of Mysore.

The Mysore Insolvency Bill.

FILE No. 21 OF 1910-11.

NOTIFICATION.

No. 89—*L. C., dated Bangalore, 22nd September* 1909.

Under Rule 31 of the rules relating to the conduct of business of the Mysore Legislative Council, the following Bill together with a statement of objects and reasons is published for general information.

By Order,
S. HIRIYANNAIYA,
Secretary, Mysore Legislative Council.

THE MYSORE INSOLVENCY BILL.

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THE MYSORE INSOLVENCY BILL.

A Bill to consolidate and amend the Law relating to Insolvency in the territories of Mysore.

Whereas it is expedient to consolidate and amend the law relating to insolvency in the territories of Mysore; His Highness the Maharaja is pleased to enact as follows :—

Short title, extent and commencement.

1. (1) This Regulation may be called the Mysore Insolvency Regulation, 19 ;

(2) It extends to the whole of the territories of Mysore; and

(3) It shall come into force on the first day of January 19 .

Definitions.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made;

(*b*) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;

(*c*) "District Court" means the principal Civil Court of original jurisdiction;

(*d*) "prescribed" means prescribed by rules made under this Regulation;

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;

(*f*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land; and

(*g*) "the Court" means the Court exercising jurisdiction under this Regulation.

2. Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Insolvency jurisdiction.

3. (1) The District Courts shall be the Courts having jurisdiction under this Regulation:

Provided that the Government of Mysore may, by notification in the official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court under this Regulation.

(2) For the purposes of this Regulation, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Acts of insolvency.

4. A debtor commits an act of insolvency in each of the following cases, namely—

(*a*) if, in the territories of Mysore or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally;

(*b*) if, in the territories of Mysore or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(*c*) if, in the territories of Mysore or elsewhere, he makes any transfer of his property or of any part thereof, or of any interest therein, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,—

(*i*) he departs or remains out of the territories of Mysore,

(*ii*) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Regulation;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section the act of an agent may be the act of the principal.

Petition and adjudication.

5. Subject to the conditions specified in this Regulation, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Presentation and admission of petition.

6. (1) Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency petition shall be presented to a Court having judisdiction under this Regulation in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency petition unless—

(*a*) his debts amount to five hundred rupees; or

(*b*) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or

(*c*) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees; and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time; and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal of petitions.

7. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Consolidation of petitions.

8. Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

9. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Regulation in the case of a petitioning creditor.

Power to change carriage of proceedings.

10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Continuance of proceedings on death of debtor.

11. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely:—

Contents of petition.

(*a*) a statement that the debtor is unable to pay his debts;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property; together with particulars of the decree in respect of which any such order has been made;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him;

(*e*) the amount and particulars of all his property, together with—

(*i*) a specification of the value of all such property not consisting of money,

(*ii*) the place or places at which any such property is to be found, and

(*iii*) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of sub-section (1), and shall also specify—

(*a*) the act of insolvency committed by such debtor together with the date of its commission; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

12. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

Procedure on admission of petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely—

Interim proceedings against debtor.

(1) order the debtor to give reasonable security for his appearence until final orders are made upon the petition and direct that, in default of giving such security, he shall be detained in the civil prison;

(2) order the appointment of an interim receiver of the property of the debtor or of any part thereof;

(3) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

(4) order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary;

Provided that an order under clause (2), clause (3), or clause (4), shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(*i*) has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them; or

(*ii*) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at hearing.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition;

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1); and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the judge and shall form part of the record of the case.

Dismissal of petitions.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication.

16. (1) Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(*a*) the whole of the property of the insolvent, save in so far as it includes such particulars (not being books of his account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors; and

(*b*) the insolvent, if in prison for debt, shall be released;

and thereafter, except as provided by this Regulation, no creditor to whom the insolvent is indebted in respect of any debt provable under this Regulation shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (*a*), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order or disposition

of the insolvent in his trade or business, by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (*a*).

(5) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication and the Court by which the adjudication is made, shall be published in the official Gazette and in such other manner as may be prescribed.

Power to cancel one of concurrent orders of adjudication.

17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit.

Appointment of receiver.

18. (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs; or

(*b*) fails to pay the balance due from him thereon as the Court directs; or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to appoint official Receivers.

19. (1) The Government of Mysore may appoint such persons as it thinks fit to be called "Official Receivers" to be receivers under this Regulation within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Regulation, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (*b*), in respect of the services of an official receiver shall be credited to such fund as the Government may direct.

(4) Every official receiver shall receive such remuneration out of the said fund or otherwise as the Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the official receiver as such.

Duties and powers of receiver.

20. Subject to the provisions of this Regulation, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent;

(*b*) give receipts for any money received by him;

and may by leave of the Court, do all or any of the following things, namely—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulation as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon;

(*i*) divide in its existing form amongst the creditors, according to its estimated value any property which from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Special provisions in regard to immovable property.

21. (1) In any local area in which a declaration has been made under section 320 of the Code of Civil Procedure and is in force, no sale of immovable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realised, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Regulation after deducting the monies already received,

(*b*) the immovable property of the insolvent remaining unsold, and

(*c*) the incumbrances (if any) existing thereon,

and shall forward a statement to the Deputy Commissioner containing the particulars aforesaid; and thereupon the Deputy Commissioner shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 of the said Code as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(2) Nothing in this Regulation shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immovable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Regulation as if it were such a decree or order.

Appeal to Court against receiver.

22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of Court if no receiver appointed.

23. Where no receiver is appointed the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Regulation.

Schedule of creditors.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Regulation shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts:

Provided that if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Regulation.

Debt payable at a future time.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set-off.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Regulation, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side, respectively.

Secured creditors.

31. (1) Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditors does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

Interest.

32. (1) On any debt or certain sum whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is probable under this Regulation, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Regulation includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Priority of debts.

33 (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(*a*) all debts due to the Government of Mysore or to any local authority; and,

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the patnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall

be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property, and, where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Regulation, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction of rights of creditor under execution.

34. (1) Where execution of a decree has issued against the property of the debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of the debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

36. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases.

37. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

Protection of *bona fide* transactions.

38. Subject to the foregoing provisions of this Regulation with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Regulation shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration.

Provided that any such transaction takes place before the date of the order of adjudication.

Dividends.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Regulation and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable under this Regulation, the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

(4) When the receiver has realised all the property of the insolvent or so much thereof, as can in the opinion of the Court be realised without needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

40. (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent, or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus

41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Regulation, and of the expenses of the proceedings taken thereunder.

Power to annul adjudication of insolvency.

42. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under Section 27, the Court shall, on the application of the debtor or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication in annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid, but subject as aforesaid the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the official Gazette and in such other manner as may be prescribed.

Duties of debtors.

43. (1) Every debtor, whether before or after the making of an order of adjudication shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them, respectively, submit to such examination in respect of his property of his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors, as may be required by the Court or receiver, or as may be prescribed.

(2) If a debtor, whether before or after the making of an order of adjudication—

(*a*) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or

(*b*) fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or

(*c*) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year and in every such case the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

Discharge.

44. (1) A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge; and the Court shall fix a day, notice whereof shall be given by publication in the official Gazette and in such other manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after consideration the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge ; or

(*b*) suspend the operation of the order for a specified time; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The Court shall refuse to grant an absolute order of discharge on proof of any of the following facts, namely;—

(*a*) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent;

(*d*) that the insolvent has contracted any debt provable under this Regulation without having at the time contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(*f*) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his business affairs;

(*g*) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(*h*) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(*i*) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending, and of attaching conditions to an insolvent's discharge may be exercised concurrently.

Effect of order of discharge.

45 (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government of Mysore;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him, or any person who was surety for him.

Appeals.

46. (1) Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

Provided that the Chief Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

(2) Any person aggrieved by an order made by the District Court under Sections 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the Chief Court.

(3) Any person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court, may appeal to the Chief Court by leave of the District Court or of the Chief Court.

(4) The periods of limitation for appeals to the District Court and to the Chief Court under this section shall be thirty days and ninety days respectively.

General powers of Courts.

47. (1) Subject to the provisions of this Regulation, the Court, in regard to proceedings under this Regulation, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the Chief Court and District Courts, in regard to proceedings under this Regulation in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Summary administration.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—

(*a*) the estate shall, where practicable, be distributed in a single dividend,

(*b*) the provisions of this Regulation shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Regulation relating to the examination or discharge of the debtor.

Costs.

49. The costs of any proceeding under this Regulation, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Regulation, be in the discretion of the Court in which the proceeding is had.

Courts to be auxiliary to each other.

50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to make rules.

51. (1) The Chief Court may, with the previous sanction of the Government of Mysore, make rules for carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(*a*) for the appointment and remuneration of receivers (other than official receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors, and

(*c*) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the official Gazette, and shall, on such publication, have effect as if enacted in this Regulation.

Delegation of powers to official receivers.

52. (1) The Chief Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Regulation, the official receiver shall, subject to the directions of the Court, have all or any of the following powers, namely—

(*a*) to hear insolvency petitions, to examine the debtor and to make orders of adjudication;

(*b*) to frame schedules and to admit or reject proofs of creditors;

(*c*) to grant orders of discharge;

(*d*) to approve compositions or schemes of arrangement;

(*e*) to make interim orders in any case of urgency;

(*f*) to hear and determine any unopposed or *ex parte* application.

(2) Subject to the appeal to the Court provided for by section 22, any order made or act done by the official receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Undischarged insolvent obtaining credit.

53. (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

Power of Government to bar application of certain provisions to certain Courts.

54. The Government of Mysore may, by notification in the official Gazette, declare that the following provisions or any of them shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Regulation in any part of the territories of Mysore, namely—

section 15, sub-sections (2) and (3),

section 16, sub-section (3),

sections 25 to 40 (except sub-section (1), clause (*a*), and sub-section (4) of section 33),

section 44, sub-sections (3) and (4), and section 53.

Repeals.

55. (1) The enactments mentioned in schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where in any enactment or instrument in force at the date of the commencement of this Regulation reference is made to Chapter XX (OF INSOLVENT JUDGMENT-DEBTORS) of the Code of Civil Procedure, II of 1884, or to any section of that Chapter, such reference shall, so far as may be practicable, be construed as applying to this Regulation or to the corresponding section thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See Section 55.*)

Year	No.	Short title	Extent of repeal
1877	XV	The Indian Limitation Act, 1877 ...	No. 174 of the Second Schedule.
1884	II	The Code of Civil Procedure ...	Section 341, clause (*e*), and Chapter XX (sections 344 to 360).
1892	VII	The Civil Procedure Code Amendment Regulation, 1892.	Section 32.

THE INSOLVENCY BILL.

STATEMENT OF OBJECTS AND REASONS.

The provisions regarding insolvency contained in Chapter XX of the Civil Procedure Code, XIV of 1882, were omitted from the new Code of 1908 of British India and do not therefore find a place in the Code of Civil Procedure Bill now before the Council. It is therefore necessary to enact a separate law regarding insolvency and with this object the Draft Bill has been prepared on the lines of the Provincial Insolvency Act, III of 1907, of British India.

Letter No. Pol. 598, dated 23rd December 1910, from the Offg. Secretary to Government, General and Revenue Departments, to the First Assistant Resident in Mysore.

I am directed to address you on the Law of Insolvency in My- **Serial No. 1.**
sore and to state as follows :—

2. The law on the subject is at present contained in Chapter XX, sections 344 to 360 of the existing Code of Civil Procedure. As the provisions stand, they cannot be availed of by a debtor or creditor except, by the former, when he has already been arrested or his property attached in execution of a decree or by the creditor when he has obtained a decree in his favour. They are thus found to be somewhat defective; and as they have been omitted from the new Code of Civil Procedure Bill about to become law and as the subject is one that does not readily fall within the proper scope of the law of ordinary procedure of Courts, it has been considered expedient, following the example of the Government of India, to re-enact the law on the subject, on the lines of the Provincial Insolvency Act recently enacted in British India, with such modifications and alterations as are necessary to meet the requirements of this State.

3. The Bill was placed before the Legislative Council at the meeting held on the 13th January 1910 when it was referred to a Select Committee for consideration and report. Their report and the Bill as amended by them were considered at the meeting of the Legislative Council held on the 22nd November 1910, and I am now to forward herewith a copy of the Bill as adopted by the Council.

4. The points on which the Bill differs from the corresponding British Indian Act are detailed below with brief explanatory remarks :—

Clause 3.—Sub-clause (2) of this clause has been omitted as the necessary provision will be made in the Mysore Civil Courts Regulation, which is proposed to be amended in connection with the Small Cause Courts Bill now before the Legislative Council.

Clauses 9 and 10.—To make the meaning clear, the words "petitioning creditor" have been substituted for the word "petitioner" in clause 9, where it first occurs; and the words "such representative being substituted as the Court may direct" have been added at the end of clause 10, so as to provide for proper representation in proceedings where the debtor concerned dies after the insolvency proceedings have been set in motion.

Clause 16, sub-clause (3).—The provision contained in this sub-clause, which makes the property of which the insolvent has only the "reputed ownership" available to his creditors in insolvency is considered unsuited to Mysore, as it is meant to be applicable only to large commercial centres, and has therefore been omitted. A motion for its retention was made in the Legislative Council, but was lost.

Clause 21.—Sub-clause (2) of this clause has been omitted as there is no such enactment as is referred to in force in Mysore.

Clause 28.—The words "certain or contingent" occurring in sub-clause (1) of this clause have been omitted, as it is doubtful whether the value of contingent rights can be fixed with sufficient approximateness for practical purposes and as it would be as much as may be fairly expected in such cases to provide for the discounting of "future" debts at their present worth. It may be remarked that the word "contingent" does not seem to have acquired a definite meaning in Indian Law.

Clause 36.—The clause, as it stands in the British Indian Act, refers mainly to English marriage settlements. It is considered that similar provision should be made in the case of marriage *gifts*, especially those that constitute "Stridhana" under Hindu Law. The words "at or" have been substituted for "before and" in the beginning of this clause.

Clause 46.—In clause (3) of the corresponding provision of the British Indian Act, provision has been made for appeals to High Court in certain cases with the previous permission of the District Court or the High Courts concerned. It is considered unnecessary to

introduce this novel provision into the procedure of the Courts of the State. Provision has been made instead for revision in such cases as well as in cases falling under clause (1).

Section 53 was omitted on the recommendation of the Select Committee on the ground that there was no need for such a provision in Mysore and that it was undesirable that penal provisions should be needlessly multiplied. The Legislative Council refused to pass a motion made for its retention.

Section 54.—As there is no great diversity of conditions between different places in the State and as all the provisions of the Bill which were considered unsuited to Mysore have been deleted from it, this section has been omitted.

Clause 25.—This clause which provides for special mode of proof, as by sending affidavits through post, was recommended by the Select Committee to be dropped on the ground that in a small State like Mysore parties can well appear in Courts without much inconvenience. The matter having been left open to the Council, a motion for its retention was brought forward at the meeting held on the 22nd November 1910 and carried by a majority. The reason that weighed with the Council in arriving at this conclusion was that it would provide facilities for proving the claim of a creditor who may be residing at a great distance from the Court, *e.g.*, a merchant carrying on business in Delhi or Benares but having commercial relations with the debtor in Mysore. It was also considered that the saving of unnecessary costs should be an essential feature of insolvency proceedings.

5. The other changes made in the Bill are either of a verbal or consequential character and call for no remarks.

6. I am now to request that the sanction of the Government of India may be obtained early for the Bill being passed into law as it is intended that the Bill should come into force simultaneously with the Code of Civil Procedure Bill on the 1st July 1911.

D. O. No. 464, *dated the 27th January 1911, from Mr. P. B. Warburton, First Assistant Resident in Mysore, to Mr. T. Ananda Row, B.A., C.I.E., Dewan.*

Serial No. 2

Will you kindly refer to Mr. Balasundaram Iyer's letter No. 598,dated the 23rd December 1910, regarding the Mysore Insolvency Bill.

2. The Bill appears to the Resident to be suitable but before submitting the measure to the Government of India he has asked me to bring the following minor points to the notice of the Durbar in case they wish to adopt any of them either at the present stage or before the Bill is finally passed by His Highness the Maharaja.

Clause 32 (1) *of the Bill.*—The word "certain" in line 1 should presumably follow and not precede the word "sum."

Clause 36.—The effect of the alteration made in this clause will probably be more comprehensive than what is apparently contemplated by the Legislative Council. The words "or in consideration of marriage" might be construed to include fraudulent transfers of property made *at any* time after marriage by a husband to his wife, by a father-in-law to his son-in-law or daughter-in-law, etc., a result which is of course not intended. The substitution of the words "before or at, and in consideration of, marriage" would seem to be more appropriate.

Clause 55 (1)—Sub-clause (1) and the schedule therein referred to seem to be unnecessary and might be omitted as the Indian Limitation Act, XV of 1877, is to be repealed by a new Limitation Regulation and the Code of Civil Procedure, II of 1884, and its amending Regulation VII of 1892 by a new Code of Civil Procedure. The new Limitation Regulation, the new Code of Civil Procedure and the Insolvency Regulation are, as at present arranged, to be brought into force simultaneously on the 1st July 1911.

D. O. Letter Pol. No. 786, *dated 25th February 1911, from the Dewan to the First Assistant Resident in Mysore.*

Serial No. 3.

With reference to your D. O. letter No. 464, dated the 27th January 1911, regarding the Mysore Insolvency Bill, I write to say that the suggestion regarding clause 32 (1) of the Bill has been noted for necessary action at the time of the final consideration of the Bill by the Legislative Council. The inversion of the order of words in the draft was due to an oversight.

As regards the amendment to clause 36 of the Bill, I am to state that the Select Committee also felt the difficulty referred to in your letter and they suggested the amendment since adopted by the Council as on the whole the best alternative. The amendment now

suggested in the letter under reply will be placed before the Legislative Council at the time of the final consideration of the Bill and will be adopted or dropped according to the decision of that body.

With reference to the suggestion about the omission of certain repeals (para 1 of clause 55 and the schedule), I am to state that the schedule was appended as it was thought that the Bill should be self-contained and itself make provision for all the necessary repeals. The Bill would in fact have been incomplete without them. It is only an accident that the enactments referred to in the Schedule happen also to be repealed independently. In this view the retention of para (1) of clause 55 and of the schedule does not seem to be objectionable.

THE MYSORE INSOLVENCY BILL
AS FINALLY PASSED BY THE LEGISLATIVE COUNCIL.

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THE MYSORE INSOLVENCY BILL.

A Bill to consolidate and amend the Law relating to Insolvency in Mysore.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in Mysore; His Highness the Maharaja is pleased to enact as follows :—

Short title, extent and commencement.

1. (1) This Regulation may be called "the Mysore Insolvency Regulation, 1911."

(2) It extends to the whole of Mysore; and

(3) It shall come into force on the first day of July 1911.

Definitions.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made :

(*b*) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor :

(*c*) "District Court" means the principal Civil Court of original jurisdiction :

(*d*) "prescribed" means prescribed by rules made under this Regulation :

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit :

(*f*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land : and

(*g*) "the Court" means the Court exercising jurisdiction under this Regulation.

(2) Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Insolvency jurisdiction.

3. The jurisdiction under this Regulation shall be exercised by the District Courts.

Provided that the Government of Mysore may, by notification in the official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court under this Regulation.

Acts of insolvency.

4. A debtor commits an act of insolvency in each of the following cases, namely :—

(*a*) if, in Mysore or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally ;

(*b*) if, in Mysore or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ;

(*c*) if, in Mysore or elsewhere, he makes any transfer of his property or of any part thereof, or of any interest therein which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;

(*d*) if, with intent to defeat or delay his creditors,—

(*i*) he departs or remains out of Mysore,

(*ii*) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Regulation;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section the act of an agent may be the act of the principal.

Petition and adjudication.

5. Subject to the conditions specified in this Regulation, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Presentation and admission of petition.

6. (1) Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency petition shall be presented to a Court having jurisdiction under this Regulation in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency petition unless—

(*a*) his debts amount to five hundred rupees; or,

(*b*) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or

(*c*) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal of petitions.

7. No petition, whether presented by a debtor or by a creditor shall be withdrawn without the leave of the Court.

Consolidation of petitions.

8. Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

9. Where the petitioning creditor does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Regulation in the case of a petitioning creditor.

Continuance of proceedings on death of debtor.

10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive, such representative being substituted as the Court may direct.

Contents of petition.

11. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property ; together with particulars of the decree in respect of which any such order has been made ;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him ;

(*e*) the amount and particulars of all his property, together with—

(*i*) a specification of the value of all such property not consisting of money;

(*ii*) the place or places at which any such property is to be found ; and

(*iii*) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of sub-section (1), and shall also specify—

(*a*) the act of insolvency committed by such debtor together with the date of its commission; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

Procedure on admission of petition.

12. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

Interim proceedings against debtor.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely :—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison,

(2) order the appointment of an interim receiver of the property of the debtor or of any part thereof,

(3) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree,

(4) order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (2), clause (3) or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(*i*) has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them or,

(*ii*) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at hearing.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition,

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the judge and shall form part of the record of the case.

Dismissal of petition.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication.

16. (1) Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(*a*) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors, and

(*b*) the insolvent, if in prison for debt, shall be released;

and thereafter, except as provided by this Regulation, no creditor to whom the insolvent is indebted in respect of any debt provable under this Regulation shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose.

(3) All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among creditors in accordance with the provisions of sub-section (2), clause (*a*).

(4) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(5) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(6) Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication and the Court by which the adjudication is made, shall be published in the official Gazette and in such other manner as may be prescribed.

Power to cancel one of concurrent orders of adjudication.

17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit.

Appointment of receiver.

18. (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the balance due from him thereon as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to appoint official receivers.

19. (1) The Government of Mysore may appoint such persons as it thinks fit to be called "Official Receivers" to be receivers under this Regulation within such local limits as it may prescribe.

(2) Where any official receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Regulation, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (*b*), in respect of the services of an official receiver shall be credited to such fund as the Government may direct.

(4) Every official receiver shall receive such remuneration out of the said fund or otherwise as the Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the official Receiver as such.

Duties and powers of receiver.

20. Subject to the provisions of this Regulation, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent;

(*b*) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely:—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulation as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(*h*) refer any dispute to arbitration and compromise all debts, claims and liabilities, on such terms as may be agreed upon;

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Special provisions in regard to immovable property.

21. In any local area in which a declaration has been made under section 68 of the Code of Civil Procedure and is in force, no sale of immovable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realized, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Regulation after deducting the monies already received,

(*b*) the immovable property of the insolvent remaining unsold, and

(*c*) the incumbrances (if any) existing thereon,

and shall forward a statement to the Deputy Commissioner containing the particulars aforesaid; and thereupon the Deputy Commissioner shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by paragraphs 2 to 10 of the third schedule of the said Code as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

Appeal to Court against receiver.

22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of Court if no receiver appointed.

23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Regulation.

Schedule of creditors.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Regulation shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be pasted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Regulation, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and hearing their objections (if any), shall comply with or reject the application.

Mode of proof.

25. (1) A debt may be proved under this Regulation by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

Compositions and schemes of arrangement.

27. (1) Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors by publication in the official Gazette and in such other manner as may be prescribed.

(2) If on the consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's dicharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court and the Court shall frame a schedule in accordance with the provisions of Section 24, the order of adjudication (if any) shall be annulled and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this sub-section, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

Debts provable under this Regulation.

28. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Regulation.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Regulation.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Debt payable at a future time.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Regulation, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account and no more, shall be claimed or paid on either side, respectively.

Mutual dealings and set-off.

31. (1) Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

Secured creditors.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

32. (1) On any debt or certain sum whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Regulation, the creditor may prove for interest at a rate not exceeding six per centum per annum—

Interest.

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Regulation includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

33. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

Priority of debts.

(*a*) all debts due to the Government of Mysore or to any local authority; and,

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and, where there is a surplus of the partnership property, it shall be

dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Regulation, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction of rights of creditor under execution.

34. (1) Where execution of a decree has issued against the property of the debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

36. Any transfer of property not being a transfer made before or at and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases.

37. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

Protection of *bona fide* transactions.

38. Subject to the foregoing provisions of this Regulation with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Regulation shall invalidate in the case of an insolvency.—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication.

Dividends.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Regulation and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable under this Regulation, the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of

the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

(4) When the receiver has realised all the property of the insolvent or so much thereof, as can in the opinion of the Court be realised whithout needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

40. (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent, or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus.

41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Regulation, and of the expenses of the proceedings taken thereunder.

Power to annul adjudication of insolvency.

42. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall on the application of the debtor or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjuded insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the official Gazette and in such other manner as may be prescribed.

Duties of debtors.

43. (1) Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors, as may be required by the Court or receiver, or as may be prescribed.

(2) If a debtor, whether before or after the making of an order of adjudication—

(*a*) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or

(*b*) fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or

(*c*) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year; and in every such case the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

Discharge.

44. (1) A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge; and the Court shall fix a day, notice whereof shall be given by publication in the official Gazette and in such other manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The Court shall refuse to grant an absolute order of discharge on proof of any of the following facts, namely:—

(*a*) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent;

(*d*) that the insolvent has contracted any debt provable under this Regulation without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(*f*) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagence in living, or by gambling or by culpable neglect of his business affairs;

(*g*) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(*h*) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(*i*) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending, and of attaching conditions to an insolvent's discharge, may be exercised concurrently.

Effect of order of discharge.

45. (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government of Mysore;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him, or any person who was surety for him.

Appeals.

46. (1) Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final.

(2) Any person aggrieved by an order made by the District Court under sections 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the Chief Court.

(3) The Chief Court may, for the purpose of satisfying itself as to the legality or correctness of any order of a District Court passed under sub-section (1) or of any order other than those mentioned in sub-section (2) call for the case and pass such order with respect thereto as it thinks fit.

(4) The periods of limitation for appeals to the District Court and to the Chief Court under this section shall be thirty days and ninety days respectively.

General powers of Courts.

47. (1) Subject to the provisions of this Regulation, the Court, in regard to proceedings under this Regulation, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the Chief Court and District Courts, in regard to proceedings under this Regulation in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Summary Administration.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—

(*a*) the estate shall, where practicable, be distributed in a single dividend,

(*b*) the provisions of this Regulation, shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Regulation, relating to the examination or discharge of the debtor.

Costs.

49. Subject to any rules made under this Regulation, it shall be competent to the Court before which proceedings are taken under the Regulation to decree costs of such proceedings including the costs of maintaining a debtor in the civil prison in such manner as it thinks fit.

Courts to be auxiliary to each other.

50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to make rules.

51. (1) The Chief Court may, with the previous sanction of the Government of Mysore, make rules for carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(*a*) for the appointment and remuneration of receivers (other than official receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors, and

(*c*) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the official Gazette, and shall, on such publication, have effect as if enacted in this Regulation.

Delegation of powers to official receivers.

52. (1) The Chief Court with the like sanction may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Regulation, the official receiver shall, subject to the directions of the Court, have all or any of the following powers, namely:—

(*a*) to hear insolvency petitions, to examine the debtor and to make orders of adjudication;

(*b*) to frame schedules and to admit or reject proofs of creditors;

(*c*) to grant orders of discharge;

(*d*) to approve compositions or schemes of arrangement;

(*e*) to make interim orders in any case of urgency;

(*f*) to hear and determine any unopposed or *ex parte* application.

(2) Subject to the appeal to the Court provided for by section 22, any order made or act done by the official receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Repeals.

55. (1) The enactments mentioned in schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where in any enactment or instrument in force at the date of the commencement of this Regulation reference is made to Chapter XX (OF INSOLVENT JUDGMENT-DEBTORS) of the Code of Civil Procedure, II of 1884, or to any section of that Chapter, such reference shall, so far as may be practicable, be constructed as applying to this Regulation or to the corresponding section thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 55.)

Year	No.	Short title	Extent of repeal
1877	XV	The Indian Limitation Act, 1877	No. 174 of the second schedule.
1884	II	The Code of Civil Procedure ...	Section 341, clause (*e*), and Chapter XX (sections 344 to 360).
1892	VII	The Civil Procedure Code Amendment Regulation, 1892.	Section 32.

Letter No. Pol. 2119, *dated the 6th April* 1911, *from P. B. Warburton, Esq., I. C. S., First Assistant to the Resident in Mysore, to the Dewan of Mysore.*

Serial No. 4.

I am directed to acknowledge the receipt of Mr. Balasundaram Iyer's letter No. 598, dated the 23rd December 1910, forwarding, for the sanction of the Government of India, a draft of a Bill which the Durbar propose to enact so as to consolidate and amend the Law relating to Insolvency in the Mysore State.

2. In reply, I am to state that the Governor-General in Council has accorded his consent to the draft Bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

NO. J. 3213—LEGIS. 21-10, DATED THE 22ND MAY 1911.

Serial No. 5.

ORDER THEREON.—Ordered that the Bill to consolidate and amend the Law relating to Insolvency in Mysore, which received the assent of His Highness the Maharaja on the 15th May 1911, be published for general information, as Regulation No. VI of 1911.

S. HIRIYANNAIYA,
For *Officiating Secretary to Government.*

To the Compiler *Mysore Gazette*, with the copy of the Regulation for publication in the Gazette in Part III, in English and Kanarese.

Letter No. Pol. 1079, *dated the 9th June* 1911, *from the Secretary to Government, General and Revenue Departments, to the First Assistant Resident in Mysore, Bangalore.*

Serial No. 6.

I am directed to forward herewith a copy of Regulation No. VI of 1911, a Regulation to consolidate and amend the Law relating to Insolvency in Mysore, with 9 spare copies and to request that one copy may, as usual, be forwarded to His Highness the Nizam's Government.

Notification No. J. 3435—Legis. 21-10, dated the 14th June 1911.

Serial No. 7.

Publishes on erratum in line 8, para (3) of Section 39 of the Regulation as published, *viz.*, substitution of "debt" for "death."

3

THE MYSORE INSOLVENCY BILL.

A Bill to consolidate and amend the Law relating to Insolvency in the territories of Mysore.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in the territories of Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent and commencement.

I. (1) This Regulation may be called the Mysore Insolvency Regulation, 190

(2) It extends to the whole of the territories of Mysore: and

(3) It shall come into force on the first day of January 19

Definitions.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made:

(*b*) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor:

(*c*) "District Court" means the principal Civil Court of original jurisdiction:

(*d*) "prescribed" means prescribed by rules made under this Regulation:

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit:

(*f*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land: and

(*g*) "the Court" means the Court exercising jurisdiction under this Regulation.

(2) Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Insolvency jurisdiction.

3. (1) The District Courts shall be the Courts having jurisdiction under this Regulation:

Provided that the Government of Mysore may, by notification in the official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court under this Regulation.

(2) For the purposes of this Regulation, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Acts of insolvency.

4. A debtor commits an act of insolvency in each of the following cases, namely:—

(*a*) if, in the territories of Mysore or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally;

(*b*) if, in the territories of Mysore or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(*c*) if, in the territories of Mysore or elsewhere, he makes any transfer of his property or of any part thereof, or of any interest therein, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,—

(*i*) he departs or remains out of the territories of Mysore,

(*ii*) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Regulation;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section the act of an agent may be the act of the principal.

Petition and adjudication.

5. Subject to the conditions specified in this Regulation, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Presentation and admission of petition.

6. (1) Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency petition shall be presented to a Court having jurisdiction under this Regulation in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency petition unless—

(*a*) his debts amount to five hundred rupees; or

(*b*) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or

(*c*) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his

security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal of petitions.

7. No petition, whether presented by a debtor or by a creditor shall be withdrawn without the leave of the Court.

Consolidation of petitions.

8. Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

9. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Regulation in the case of a petitioning creditor.

Continuance of proceedings on death of debtor.

10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Contents of petition.

11. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property; together with particulars of the decree in respect of which any such order has been made ;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of

his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him ;

(*e*) the amount and particulars of all his property, together with—

(*i*) a specification of the value of all such property not consisting of money ;

(*ii*) the place or places at which any such property is to be found ; and

(*iii*) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of sub-section (1), and shall also specify—

(*a*) the act of insolvency committed by such debtor together with the date of its commission ; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

Procedure on admission of petition.

12. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

Interim proceedings against debtor.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely :—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison,

(2) order the appointment of an interim receiver of the property of the debtor or of any part thereof,

(3) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree,

(4) order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (2), clause (3) or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(*i*) has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them, or

(*ii*) has failed to disclose or has concealed destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at hearing.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition,

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of

such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the judge and shall form part of the record of the case.

Dismissal of petition.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication

16. (1) Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(*a*) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors, and

(*b*) the insolvent, if in prison for debt, shall be released;

and thereafter, except as provided by this Regulation, no creditor to whom the insolvent is indebted in respect of any debt provable under this Regulation shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (*a*), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (*a*).

(5) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication and the Court by which the adjudication is made, shall be published in the official Gazette and in such other manner as may be prescribed.

Power to cancel one of concurrent orders of adjudication.

17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit.

18. (1) The Court may, at the time of the

Appointment of receiver.

order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the balance due from him thereon as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to appoint Official Receivers.

19. (1) The Government of Mysore may appoint such persons as it thinks fit to be called "Official Receivers" to be receivers under this Regulation within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Regulation, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (*b*), in respect of the services of an Official Receiver shall be credited to such fund as the Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund

or otherwise as the Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Duties and powers of receiver.

20. Subject to the provisions of this Regulation, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent ;

(*b*) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely :—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same ;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent ;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court ;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulation as to security and otherwise as the Court thinks fit ;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon ;

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Special provisions in regard to immoveable property.

21. (1) In any local area in which a declaration has been made under section 320 of the Code of Civil Procedure and is in force, no sale of immoveable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver ; but, after the other property of the insolvent has been realised, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Regulation after deducting the monies already received,

(*b*) the immoveable property of the insolvent remaining unsold, and

(*c*) the incumbrances (if any) existing thereon,

and shall forward a statement to the Deputy Commissioner containing the particulars aforesaid; and thereupon the Deputy Commissioner shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 of the said Code as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(2) Nothing in this Regulation shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Regulation as if it were such a decree or order.

Appeal to Court against receiver.

22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of Court if no receiver appointed.

23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Regulation.

Schedule of creditors.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Regulation shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon

the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Regulation, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and hearing their objections (if any), shall comply with or reject the application.

Mode of proof.

25. (1) A debt may be proved under this Regulation by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

Compositions and schemes of arrangement.

27. (1) Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors by publication in the official Gazette and in such other manner as may be prescribed.

(2) If on the consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or

by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this subsection, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

Debts provable under this Regulation.

28. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Regulation.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Regulation.

Debt payable at a future time.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set-off.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Regulation, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Secured creditors.

31. (1) Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

Interest.

32. (1) On any debt or certain sum whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Regulation, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Regulation includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Priority of debts.

33. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(*a*) all debts due to the Government of Mysore or to any local authority; and,

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in

respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and, where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Regulation, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction of rights of creditor under execution.

34. (1) Where execution of a decree has issued against the property of the debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in

execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

36. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases.

37. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

Protection of *bonâ fide* transactions.

38. Subject to the foregoing provisions of this Regulation with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Regulation shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication.

Dividends.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Regulation and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable under this Regulation, the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of subsection (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

(4) When the receiver has realised all the property of the insolvent or so much thereof, as can in the opinion of the Court be realised without needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property

of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

40. (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent, or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus.

41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Regulation, and of the expenses of the proceedings taken thereunder.

Power to annul adjudication of insolvency.

42. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall, on the application of the debtor or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on

such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the official Gazette and in such other manner as may be prescribed.

Duties of debtors.

43. (1) Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors, as may be required by the Court or receiver, or as may be prescribed.

(2) If a debtor, whether before or after the making of an order of adjudication—

(*a*) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or

(*b*) fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or

(*c*) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year; and in every such case the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

Discharge.

44. (1) A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge; and the Court shall fix a day, notice whereof shall be given by publication in the official Gazette and in such other manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge; or

(*b*) suspend the operation of the order for a specified time; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The Court shall refuse to grant an absolute order of discharge on proof of any of the following facts, namely :—

(*a*) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible ;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent;

(*d*) that the insolvent has contracted any debt provable under this Regulation without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(*f*) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his business affairs;

(*g*) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(*h*) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(*i*) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending, and of attaching conditions to an insolvent's discharge may be exercised concurrently.

Effect of order of discharge.

45 (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government of Mysore;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him, or any person who was surety for him.

Appeals.

46. (1) Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

Provided that the Chief Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

(2) Any person aggrieved by an order made by the District Court under sections 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the Chief Court.

(3) Any person aggrieved by any other order made by a District Court otherwise

than in appeal from an order made by a subordinate Court, may appeal to the Chief Court by leave of the District Court or of the Chief Court.

(4) The periods of limitation for appeals to the District Court and to the Chief Court under this section shall be thirty days and ninety days respectively.

General powers of Courts.

47. (1) Subject to the provisions of this Regulation, the Court, in regard to proceedings under this Regulation, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the Chief Court and District Courts, in regard to proceedings under this Regulation in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Summary administration.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—

(*a*) the estate shall, where practicable, be distributed in a single dividend,

(*b*) the provisions of this Regulation shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Regulation relating to the examination or discharge of the debtor.

Costs.

49. The costs of any proceeding under this Regulation, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Regulation, be in the discretion of the Court in which the proceeding is had.

Courts to be auxiliary to each other.

50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the

order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to make rules.

51. (1) The Chief Court may, with the previous sanction of the Government of Mysore, make rules for carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(*a*) for the appointment and remuneration of receivers (other than official receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors, and

(*c*) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the official Gazette, and shall, on such publication, have effect as if enacted in this Regulation.

Delegation of powers to official receivers.

52. (1) The Chief Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Regulation, the official receiver shall, subject to the directions of the Court, have all or any of the following powers, namely :—

(*a*) to hear insolvency petitions, to examine the debtor and to make orders of adjudication ;

(*b*) to frame schedules and to admit or reject proofs of creditors ;

(*c*) to grant orders of discharge ;

(*d*) to approve compositions or schemes of arrangement ;

(*e*) to make interim orders in any case of urgency ;

(*f*) to hear and determine any unopposed or *ex parte* application.

(2) Subject to the appeal to the Court provided for by section 22, any order made or act done by the official receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Undischarged insolvent obtaining credit.

53. (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment

than in appeal from an order made by a subordinate Court, may appeal to the Chief Court by leave of the District Court or of the Chief Court.

(4) The periods of limitation for appeals to the District Court and to the Chief Court under this section shall be thirty days and ninety days respectively.

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50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the

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for a term which may extend to six months, or with fine, or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

Power of Government to bar application of certain provisions to certain Courts.

54. The Government of Mysore may, by notification in the official Gazette, declare that the following provisions or any of them shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Regulation in any part of the territories of Mysore, namely:—

section 15, sub-sections (2) and (3),
section 16, sub-section (3),
sections 25 to 40 (except sub-section (1), clause (*a*), and sub-section (4) of section 33),
section 44, sub-sections (3) and (4), and section 53.

Repeals.

55. (1) The enactments mentioned in schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where in any enactment or instrument in force at the date of the commencement of this Regulation reference is made to Chapter XX (OF INSOLVENT JUDGMENT-DEBTORS) of the Code of Civil Procedure, II of 1884, or to any section of that Chapter, such reference shall, so far as may be practicable, be construed as applying to this Regulation or to the corresponding section thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 55.*)

Year.	No.	Short title.	Extent of repeal.
1877	XV	The Indian Limitation Act, 1877.	No. 174 of the Second Schedule.
1884	II	The Code of Civil Procedure.	Section 341, clause (*e*), and Chapter XX (sections 344 to 360).
1892	IIV	The Civil Procedure Code Amendment Regulation, 1892.	Section 32.

THE INSOLVENCY BILL.

STATEMENT OF OBJECTS AND REASONS.

The provisions regarding insolvency contained in Chapter XX of the Civil Procedure Code, XIV of 1882, were omitted from the new Code of 1908 of British India and do not therefore find a place in the Code of Civil Procedure Bill now before the Council. It is therefore necessary to enact a separate law regarding insolvency and with this object the Draft Bill has been prepared on the lines of the Provincial Insolvency Act, III of 1907 of British India.

(29)

THE INSOLVENCY BILL.

Statement of objects and reasons.

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The Civil Procedure Code Bill.

Statement of objects & reasons

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Draft. Legis 21 of 1910-11 Serial 1

To

The First Asst. to the Hon'ble the
Resident in Mysore.

Dated Bangalore, the 23rd December 1910.

Pol: No: 5 [illegible]

Sir,

I am directed to address you on the Law of Insolvency in Mysore and to state as follows :-

2. The law on the subject is at present contained in Chapter XX, Sections 344 to 360, of the existing Code of Civil Procedure. As the provisions stand, they cannot be availed of by a debtor or creditor except by the former when he has already been arrested in execution of a decree or by the creditor when he has obtained a decree in his favour or his property attached. They are thus found to be somewhat defective; and as they have been omitted from the new Code of Civil Procedure Bill about to become law and as the subject is one that does not readily fall within the proper scope of the law of ordinary

procedure

procedure of courts, it has been considered expedient, following the example of the Government of India, to re-enact the law on the subject, on the lines of the Provincial Insolvency Act recently enacted in British India, with such modifications and alterations as are necessary to meet the requirements of this State.

3. The question whether a Regulation with such elaborate provisions as are to be found in the British Indian Act just referred to would be required in Mysore in its present condition, and whether it would not be sufficient if Chapter XX of the existing Civil Procedure Code were added to the new Civil Procedure Code Bill with such additions as might be found necessary, engaged the attention of the Durbar. It was found that the British Indian Act, while giving to parties increased opportunities for taking advantage of the Law of Insolvency also affords them facilities for getting fraudulent alienations of the judgment-debtor's property summarily set aside, i.e., without the need for the expensive and protracted proceedings of a

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regular suit. For this and other reasons it was recommended by them that ~~considered desirable to introduce~~ a Bill on the lines of the British Indian Act would be preferable to ~~rather than retain~~ the fragmentary provisions of the law which are to be found in the existing Code of Civil Procedure.

4. The Bill was placed before the Legislative Council at the meeting held on the 13th January 1910 when it was referred to a Select Committee for consideration and report. Their report and the Bill as amended by them were considered at the meeting of the Legislative Council held on the 22nd November 1910 and I am now to forward herewith a copy of the Bill as adopted by the Council.

5. The points on which the Bill differs from the corresponding British Indian Act are detailed below with brief explanatory remarks.

Clause 3. Sub Clause (2) of this clause has been omitted as the necessary provision will be made in the Mysore Civil Courts Regulation, which is proposed to be amended in

connection

connection with the Small Cause Courts Bill now before the Legislative Council.

Clauses 9&10. To make the meaning clear, the words "petitioning creditor" have been substituted for the word "petitioner" in clause 9 where it first occurs; and the words "such representative being substituted as the court may direct" have been added at the end of clause 10, so as to provide for proper representation in proceedings where the debtor concerned dies after the insolvency proceedings have been set in motion.

Clause 16, Sub Clause (3).

The provision contained in this sub-clause, which makes the property of which the insolvent has only the "reputed ownership" available to his creditors in insolvency is considered unsuited to Mysore, as it is meant to be applicable only to large commercial centres, and ~~The sub-clause~~ has therefore been omitted. A motion for its retention was made in the Legislative Council, but was lost.

Clause 21. Sub Clause (2) of this clause

clause has been omitted as there is no such enactment as is referred to, in force in Mysore.

Clause 28.

The words "certain or contingent" occurring in sub clause (1) of this clause have been omitted, as it is doubtful whether the value of contingent rights can be fixed with sufficient approximateness for practical purposes and as it would be as much as may be fairly expected in such cases to provide for the discounting of "future" debts at their present worth. It may be remarked that the word "contingent" does not seem to have acquired a definite meaning in Indian Law.

Clause 36. The clause, as it stands in the British Indian Act, refers mainly to English marriage settlements. It is considered that similar provision should be made in the case of marriage gifts, especially those that constitute "Stridhana" under Hindu Law. The words "at or" have been substituted for "before and" in the beginning of this clause.

Clause 46. In clause (3) of the corresponding

corresponding provision of the British Indian Act, provision has been made for appeals to High Courts in certain cases with the previous permission of the District Court or the High Court concerned. It is considered unnecessary to introduce this novel provision into the procedure of the courts of the State. Provision has been made instead for revision in such cases as well as in cases falling under clause (1).

Section 53 was omitted on the recommendation of the Select Committee on the ground that there was no need for such a provision in Mysore and that it was undesirable that penal provisions should be needlessly multiplied. The Legislative Council refused to pass a motion made for its retention.

Section 54. As there is no great diversity of conditions between different places in the State and as all the provisions of the Bill which were considered unsuited to Mysore have been deleted from it, this section has been omitted.

Clause 25. This clause which provides

provides for a special mode of proof, as by sending affidavits through post, was recommended by the Select Committee to be dropped on the ground that in a small State like Mysore parties can well appear in courts without much inconvenience. The matter having, however, been left open to the Council, a motion for its retention was brought forward at the meeting held on the 2nd instant and carried by a majority. The reason that weighed with the Council in arriving at this conclusion was that it would provide facilities for the claim proving of a creditor who may be residing at a great distance from the court, e.g., a merchant carrying on business in Delhi or Benares but having commercial relations with the debtor in Mysore. It was considered that the saving of unnecessary costs also should be an essential feature of Insolvency proceedings.

6. The other changes made in the Bill are either of a verbal or consequential character and call for no remarks.

7. I am now to request that the sanction of the Government of India may be obtained early

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early for the Bill being passed into law as it is intended that the Bill should come into force simultaneously with the Code of Civil Procedure Bill on the 1st July 1911.

I have etc.,

Offg. Secretary to Government

D.K.
137.

ch.
22/12/10.

D. O. No. 3012 1954

BANGALORE.

27th January 1911.

Will you kindly refer to Mr. Balasundaram Iyer's letter No.595, dated the 23rd December 1910, regarding the Mysore Insolvency Bill.

The Bill appears to the Resident to be suitable but before submitting the measure to the Government of India he has asked me to bring the following --- minor points to the notice of the Durbar in case they wish to adopt any of them either at the present stage or before the Bill is finally passed by His Highness the Maharaja.

Clause 32 (1) of the Bill.

The word "certain" in line 1 should presumably follow and not precede the word "sum".

Clause 36

Clause 36.

The effect of the alteration made in this --- clause will probably be more comprehensive than -- what is apparently contemplated by the Legislative Council. The words "or in consideration of marriage" might be construed to include fraudulent transfers of property made at any time after marriage by a husband to his wife, by a father-inlaw to his son in-law or daughter-in-law, etc.- a result which is of course not intended. The substitution of the words "before or at, and in consideration of, marriage" would seem to be more appropriate.

Clause 55 (1).

Sub clause (1) and the schedule therein referred to seem tobe unnecessary and might be omitted as the Indian Limitation Act, XV of 1877 is to be repealed by a new Limitation Regulation and the Code of Civil Procedure, II of 1884 and its amending Regulation VII of 1882 by a new Code of Civil Procedure. The new Limitation Regulation, the new

Code

Code of Civil Procedure and the Insolvency Regulation are, as at present arranged, to be brought -- into force simultaneously on the 1st July 1911.

Yours Sincerely

First Asst. Resident.

To

T. Ananda Row, Esq., C.I.E.,
Dewan of Mysore.

K.M.
25.1.11.

Legis 2. 1 Sf 1910-11
Serie 2

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Legis 21 of 1910-11, serial 3 (39)

Draft D. O. Pol: No: 785.

Bangalore 25th Feb. 1911.

My Dear Sir,.....

With reference to your D. O. letter No. 464 dated the 27th January 1911, regarding the Mysore Insolvency Bill, I write to say that the suggestion regarding Clause 32 (1) of the Bill has been noted for necessary action at the time of final consideration by the Legislative Council. The inversion of the order of words in the draft was due to an oversight.

As regards the amendment to clause 36 of the Bill, I am to state that the Select Committee also felt the difficulty referred to in your letter and they suggested the amendment now made as on the whole the best alternative. The amendment now suggested in the letter under reply will be placed before the Legislative Council at the time of the final consideration of the Bill and will be adopted or dropped according to the decision of that body.

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With reference to the suggestion about the omission of certain repeals (in para 1 of clause 55 and the Schedule), I am to state that the schedule was appended as it was thought that the Bill should be self-contained and itself make provision for all the necessary repeals. The Bill would in fact have been incomplete without them. It is only an accident that the enactments referred to in the Schedule happen also to be repealed independently. In this view the retention of para (1) of clause 55 and of the Schedule does not seem to be objectionable.

I am
Yours faithfully
Secretary.

To P. B. Wadsworth Esq ICS
1st Asst Resd

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~~NOTIFICATION.~~

~~*No. 89—I. C., dated Bangalore, 22nd September 1909.*~~

~~Under rule 31 of the rules relating to the conduct of business of the Mysore Legislative Council,~~ the following Bill ~~together with a statement of objects and reasons~~ is published for general information.

~~By Order,~~

~~S. HIRIYANNAIYA,~~

~~*Secretary, Mysore Legislative Council.*~~

THE MYSORE INSOLVENCY BILL.

as finally passed by the Legislative Council.

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THE MYSORE INSOLVENCY BILL.

A Bill to consolidate and amend the Law relating to Insolvency in ~~the territories of~~ Mysore.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in ~~the territories of~~ Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent and commencement.

I. (1) This Regulation may be called the Mysore Insolvency Regulation, 19~~0~~// .

(2) It extends to the whole of ~~the territories of~~ Mysore: and

(3) It shall come into force on the first day of ~~January~~ April 19 //.

Definitions.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made:

(*b*) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor:

(*c*) "District Court" means the principal Civil Court of original jurisdiction:

(*d*) "prescribed" means prescribed by rules made under this Regulation:

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit:

(*f*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land: and

(*g*) "the Court" means the Court exercising jurisdiction under this Regulation.

(2) Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Petition and adjudication.

5. Subject to the conditions specified in this Regulation, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Presentation and admission of petition.

6. (1) Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency petition shall be presented to a Court having jurisdiction under this Regulation in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency petition unless—

(*a*) his debts amount to five hundred rupees; or

(*b*) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or

(*c*) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his

security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal of petitions.

7. No petition, whether presented by a debtor or by a creditor shall be withdrawn without the leave of the Court.

Consolidation of petitions.

8. Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

9. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Regulation in the case of a petitioning creditor.

Continuance of proceedings on death of debtor.

10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Contents of petition.

11. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property; together with particulars of the decree in respect of which any such order has been made ;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of

his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him;

(*e*) the amount and particulars of all his property, together with—

(*i*) a specification of the value of all such property not consisting of money;

(*ii*) the place or places at which any such property is to be found; and

(*iii*) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of sub-section (1), and shall also specify—

(*a*) the act of insolvency committed by such debtor together with the date of its commission; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

Procedure on admission of petition.

12. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

Interim proceedings against debtor.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely:—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison,

(2) order the appointment of an interim receiver of the property of the debtor or of any part thereof,

(3) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree,

(4) order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (2), clause (3) or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(*i*) has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them, or

(*ii*) has failed to disclose or has concealed destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at hearing.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition,

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of

such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the judge and shall form part of the record of the case.

Dismissal of petition.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication

16. (1) Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(*a*) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors, and

(*b*) the insolvent, if in prison for debt, shall be released;

and thereafter, except as provided by this Regulation, no creditor to whom the insolvent is indebted in respect of any debt provable under this Regulation shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (*a*), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (*a*).

(5) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication and the Court by which the adjudication is made, shall be published in the official Gazette and in such other manner as may be prescribed.

Power to cancel one of concurrent orders of adjudication.

17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit.

18. (1) The Court may, at the time of the

Appointment of receiver.

order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the balance due from him thereon as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to appoint Official Receivers.

19. (1) The Government of Mysore may appoint such persons as it thinks fit to be called "Official Receivers" to be receivers under this Regulation within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Regulation, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (*b*), in respect of the services of an Official Receiver shall be credited to such fund as the Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund

or otherwise as the Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Duties and powers of receiver.

20. Subject to the provisions of this Regulation, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent ;

(*b*) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely :—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same ;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent ;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court ;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulation as to security and otherwise as the Court thinks fit ;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon ;

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Special provisions in regard to immoveable property.

21. (1) In any local area in which a declaration has been made under section 320 of the Code of Civil Procedure and is in force, no sale of immoveable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver ; but, after the other property of the insolvent has been realised, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Regulation after deducting the monies already received,

(*b*) the immoveable property of the insolvent remaining unsold, and

(*c*) the incumbrances (if any) existing thereon,

and shall forward a statement to the Deputy Commissioner containing the particulars aforesaid; and thereupon the Deputy Commissioner shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by ~~sections 322 to 325~~ of the said Code as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

paragraph 2 (b) of the third schedule.

~~(2) Nothing in this Regulation shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Regulation as if it were such a decree or order.~~

Appeal to Court against receiver.

22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of Court if no receiver appointed.

23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Regulation.

Schedule of creditors.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Regulation shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon

the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Regulation, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and hearing their objections (if any), shall comply with or reject the application.

Mode of proof.

25. (1) A debt may be proved under this Regulation by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

Compositions and schemes of arrangement.

27. (1) Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors by publication in the official Gazette and in such other manner as may be prescribed.

(2) If on the consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or

by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this subsection, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

Debts provable under this Regulation.

28. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, ~~certain or contingent~~, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Regulation.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Regulation.

Debt payable at a future time.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set-off.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Regulation, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Secured creditors.

31. (1) Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

Interest.

32. (1) On any debt or certain sum whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Regulation, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Regulation includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Priority of debts.

33. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(*a*) all debts due to the Government of Mysore or to any local authority; and,

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in

respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and, where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Regulation, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction of rights of creditor under execution.

34. (1) Where execution of a decree has issued against the property of the debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in

execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

36. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases

37. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

Protection of *bonâ fide* transactions.

38. Subject to the foregoing provisions of this Regulation with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Regulation shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication.

Dividends.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Regulation and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable under this Regulation, the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of subsection (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

(4) When the receiver has realised all the property of the insolvent or so much thereof, as can in the opinion of the Court be realised without needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property

of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

40. (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent, or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus.

41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Regulation, and of the expenses of the proceedings taken thereunder.

Power to annul adjudication of insolvency.

42. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall, on the application of the debtor or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The Court shall refuse to grant an absolute order of discharge on proof of any of the following facts, namely :—

(a) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible ;

(b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;

(c) that the insolvent has continued to trade after knowing himself to be insolvent ;

(d) that the insolvent has contracted any debt provable under this Regulation without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;

(e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his business affairs;

(g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors ;

(h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors ;

(4)

(*i*) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending, and of attaching conditions to an insolvent's discharge may be exercised concurrently.

Effect of order of discharge.

45 (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government of Mysore;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him, or any person who was surety for him.

Appeals.

46. (1) Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

~~Provided that the Chief Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.~~

(2) Any person aggrieved by an order made by the District Court under sections 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the Chief Court.

(3) ~~Any person aggrieved by any other order made by a District Court otherwise~~

The Chief Court may, for the purpose of satisfying itself as to the legality or correctness of any order of a District Court passed under subsection (1) or of any order other than those mentioned in subsection (2), call for the case and pass such order with respect thereto as it thinks fit.

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~~than in appeal from an order made by a subordinate Court, may appeal to the Chief Court by leave of the District Court or of the Chief Court.~~

(4) The periods of limitation for appeals to the District Court and to the Chief Court under this section shall be thirty days and ninety days respectively.

General powers of Courts.

47. (1) Subject to the provisions of this Regulation, the Court, in regard to proceedings under this Regulation, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the Chief Court and District Courts, in regard to proceedings under this Regulation in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Summary administration.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—

(*a*) the estate shall, where practicable, be distributed in a single dividend,

(*b*) the provisions of this Regulation shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Regulation relating to the examination or discharge of the debtor.

Subject to any rules made under this Regulation it shall be competent to the Court before which proceedings are taken under this Regulation to decree costs of such proceedings, including the costs of maintaining a debtor in the civil prison in such manner as it thinks fit.

Costs.

~~49. The costs of any proceeding under this Regulation, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Regulation, be in the discretion of the Court in which the proceeding is had.~~

Courts to be auxiliary to each other.

50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the

order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to make rules.

51. (1) The Chief Court may, with the previous sanction of the Government of Mysore, make rules for carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(*a*) for the appointment and remuneration of receivers (other than official receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors, and

(*c*) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the official Gazette, and shall, on such publication, have effect as if enacted in this Regulation.

Delegation of powers to official receivers.

52. (1) The Chief Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Regulation, the official receiver shall, subject to the directions of the Court, have all or any of the following powers, namely :—

(*a*) to hear insolvency petitions, to examine the debtor and to make orders of adjudication ;

(*b*) to frame schedules and to admit or reject proofs of creditors ;

(*c*) to grant orders of discharge ;

(*d*) to approve compositions or schemes of arrangement ;

(*e*) to make interim orders in any case of urgency ;

(*f*) to hear and determine any unopposed or *ex parte* application.

(2) Subject to the appeal to the [redacted]urt provided for by section 22, any order made or act done by the official receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Undischarged insolvent obtaining credit.

53. (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment

for a term which may extend to six months, or with fine, or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

Power of Government to bar application of certain provisions to certain Courts.

54. The Government of Mysore may, by notification in the official Gazette, declare that the following provisions or any of them shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Regulation in any part of the territories of Mysore, namely:—

section 15, sub-sections (2) and (3),
section 16, sub-section (3),
sections 25 to 40 (except sub-section (1), clause (*a*), and sub-section (4) of section 33),
section 44, sub-sections (3) and (4), and section 53.

Repeals.

55. (1) The enactments mentioned in schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where in any enactment or instrument in force at the date of the commencement of this Regulation reference is made to Chapter XX (OF INSOLVENT JUDGMENT-DEBTORS) of the Code of Civil Procedure, II of 1884, or to any section of that Chapter, such reference shall, so far as may be practicable, be construed as applying to this Regulation or to the corresponding section thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 55.*)

Year.	No.	Short title.	Extent of repeal
1877	XV	The Indian Limitation Act, 1877.	No. 174 of the Second Schedule.
1884	II	The Code of Civil Procedure.	Section 341, clause (*e*), and Chapter XX (sections 344 to 360).
1892	XVII	The Civil Procedure Code Amendment Regulation, 1892.	Section 32.

THE INSOLVENCY BILL.

STATEMENT OF OBJECTS AND REASONS.

The provisions regarding insolvency contained in Chapter XX of the Civil Procedure Code, XIV of 1882, were omitted from the new Code of 1908 of British India and do not therefore find a place in the Code of Civil Procedure Bill now before the Council. It is therefore necessary to enact a separate law regarding insolvency and with this object the Draft Bill has been prepared on the lines of the Provincial Insolvency Act, III of 1907 of British India.

2535

Legis 21 of 1910-11
serially

Legs 119 (b

Pol: 1653

D^d 6-4-11

Secy.

FROM

P. B. WARBURTON, ESQ., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Secretary to Government,

Dated Bangalore, 6th April 1911.

SIR,

I am directed to acknowledge the receipt of Mr. Balasundaram Iyer's letter No.598-, dated the 23rd December 1910, forwarding, for the sanction of the Government of India, a draft of a Bill which the Durbar propose to enact so as to consolidate and amend the law relating to insolvency in the Mysore State.

2. In reply, I am to state that the Governor General in Council has accorded his consent to the draft Bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

I have the honour to be,
Sir,
Your most obedient servant,

P. B. Warburton

First Assistant Resident.

E.J.
5.4.11.

R. P. B.—21-1-1911.—4,000.

G.R.S. 28.]

Legis File No. 21-10.
Serial No. 6

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Legis)

READ—

the 19

Date of issue 22-5-1911

Signed by Mr S Veerasamaiya

ORDER THEREON.—No. J 3213/Legis 21-10.

Ordered that the Bill to Consolidate and amend the Laws relating to Inoculation in Mysore which received the assent of His Highness the Maharaja on

over

SUBJECT.

GPB—10,000—19-4-10

The 15th May 1911 the publishes
for general information, as Regulation No VI of 1911.

Secretary to Government

The compiled Memorandum
~~for publication~~ with Chief Secretary's Regulation
for publication and the Gazette
in Part III. in English & Canarese.
and for the supplying ~~Kannada~~ Copies
already ordered for.

Chief Secretary's Translation Section
for information.

Collector 19/5/11

Secretary 19/5/11

G.R.S. 26]

Legis 51

File No. 21-10

Serial No. 6

8/6 *Diary No. of letter replied to* .....

P. C. No. 1079

General and Revenue Secretariat

( )

, *the* 19 .

To

The F. A. Resident in Mysore, Bangalore

Date of issue 9-6-1911

Signed by

for B Ramachandrarajaiyar

Sir,

I am directed to forward herewith a copy of Regn I of 1911, a Regn to consolidate and amend the law relating to Insolvency in Mysore, with 9 spare copies and to request that one copy may, as usual, be forwarded to His Highness the Nizam's Govt.

see 90 page

I have &c.

SUBJECT.

Secretary to Govt.

SW(1) SH

6/6/11

LKB 8/6/11 SRSM

G.R.S. 26]

File No. 7-10
Serial No. 7

Diary No. of letter replied to

14/6

General and Revenue Secretariat
( )
, *the* 19 .

Date of issue 14.6.11

Signed by Mr B. Ramaswamiah.

Notification

No. J 3435/Legis-

(Erratum)

In line 8 para (3) of section 39 of the Mysore Insolvency Regulation VI of 1911 published at page 73 of Part-III of the Mysore Gazette dated the 25th May 1911, for the word "death" read "debt"

By order

Secretary to Govt

14/6

To The Computer Mysore Gazette over.

SUBJECT. for publication in Part IV of the Gazette with the request that the mistake may be corrected.

14/6/11